STATE OF COMPETITION IN THE AIRLINE INDUSTRY

United States

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

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TUESDAY, MAY 19, 1998

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 1 p.m., in Room 2141, Rayburn House Office Building, Hon. Henry Hyde (chairman of the committee) presiding.

Present: Representatives Henry J. Hyde, George W. Gekas, Stephen E. Buyer, Steve Chabot, Bob Barr, William L. Jenkins, Asa Hutchinson, Edward A. Pease, Mary Bono, John Conyers, Jr., Howard L. Berman, and William D. Delahunt.

Staff present: Joseph Gibson, Chief Antitrust Counsel; Patricia Katyoka, Staff Assistant; Julian Epstein, Minority Chief Counsel and Staff Director and Stephanie Goodman, Minority Counsel.

OPENING STATEMENT OF CHAIRMAN HYDE

Mr. HYDE [presiding]. The committee will come to order. And I apologize for keeping us waiting 15 minutes. Our time is not our own, as you well know.

At this point, I'm very pleased to introduce our newest Republican member of the House Judiciary Committee. Without question, Mary Bono, elected to represent the wonderful, beautiful 44th district in California, will ably fill the vacancy created by the very untimely death of one of the most famous members of our committee, the Honorable Sonny Bono. Mary is a 1984 graduate of the University of Southern California with a bachelor of fine arts in art history. She has two children and has been active in a wide range of community charities and service organizations. She's been named Women of the Year in 1993 by the San Georgiano Chapter of the Girl Scouts of America and has played a leadership role in support of the Drug Abuse Resistance Education program and many other worthwhile causes. Mrs. Bono also serves on the Committee on National Security.

And so we welcome you enthusiastically, Mary. Welcome.

Mr. CONYERS. Mr. Chairman?

Mr. HYDE. The gentleman from Michigan.

Mr. CONYERS. Thank you very much. I join you in welcoming Mrs. Bono. We've all been very pleased about her coming to this committee, and we join you in your welcome. Thank you.

Mr. HYDE. Today the committee conducts an oversight hearing on the state of competition in the airline industry. We touched on these issues during our November 5, 1997, general oversight hearing on the antitrust enforcement agencies. However, given the recent state of alliance agreements between major airlines, we thought it would be appropriate to revisit this topic in a little more detail. Our primary focus will be on the recent alliance agreements, but members should feel free to ask questions on any topic within the general area of airline competition.

With respect to the alliances, I want to say, first, that they are not all created equal. Each one has different characteristics, and each one should be judged on its own merits. However, each one deserves a thorough review by the agencies that are before us, and I want to stress I have no particular opinion as to whether any of these alliances is pro-competitive or anti-competitive. But I have called this hearing to learn as much as possible about them, and whatever the ultimate outcome, I believe it is important that we have a public debate about their pros and cons. And I am hopeful that today's hearing will contribute to that debate. Although the alliances will be our primary focus, there are other competitive issues out there, and I will comment briefly on two of them.

First, the Department of Transportation, in consultation with the Department of Justice and the Federal Trade Commission, has recently issued for public comment enforcement guidelines on predatory pricing. I have not yet had time to study the guidelines in detail; they're not yet final. So, I will withhold comment on their specifics, however, I do want to commend the agencies for addressing this problem because it is a serious one. And I hope you both will continue your work in this area.

Another important competitive issue is airport capacity. My constituents well know that I have long been concerned about a variety of issues raised by the busiest airport in the world, depending on how you look at it, O'Hare Airport, which is located in my district, located very close to my home. With my colleague and friend, Jesse Jackson, Jr., I have worked for the construction of the third airport in the Chicago metropolitan area. We strongly believe a third airport in Chicago, or serving Chicago, will enhance competition. We have made our views on that issue well known in a number of public arenas. And I certainly will not repeat them in detail now, but I am hopeful we can touch on that issue a little bit later on.

I particularly look forward to the testimony of Mr. Joe Karaganis, an outstanding attorney from my district, and he will speak on that issue. And with that, I want to welcome Mr. Klein and Ms. McFadden, and ask Mr. Conyers if he would like to have an opening statement.

[The prepared statement of Mr. Hyde follows:]

PREPARED STATEMENT OF HON. HENRY J. HYDE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY

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With that, I will turn to Mr. Conyers for an opening statement.

Mr. CONYERS. Thank you, Chairman Hyde, and members. I'm delighted to participate in this hearing. I was just handed a Washington Post advertisement dated Thursday, May 14, 1998, which is maybe a little bit one-sided from Ms. McFadden's point of view about how we go about keeping deregulation working. If you have any information about that ad, I'd like to know about it. I've seen other ads about mergers of the Microsoft issue. There's a lot of money being spent—distant advertising—and I am curious about it. And I think it makes these hearings quite timely.

There are two phenomena going on. One is the danger of predatory pricing on airline routes where there is little competition. And this is perhaps emphasized in the hub strategy that is now being employed by most major airlines. I'm getting for you shortly how much it costs to fly from Washington to Detroit, which is a hub, as opposed to Washington to Cleveland, which is actually nearer.

In addition, we're seeing in the telecommunications and financial industries an increasing concentration with mergers and join ventures. Now, I don't know why I'm limiting it to financial industries and telecommunications, because it's in every industry. The one question that I think would help everybody is to try to get a feel for the combinations and takeovers, mergers, acquisitions, foreign and domestic, that are coming so quickly that we probably need to get an idea of where we can get a resource in terms of finding out how these go along. I get the Wall Street Journal everyday, but unfortunately I don't tabulate all of the mergers and—well, I just remember that Polygram was about to be taken over by Mr. Ovittz, but he let Seagram go ahead and do it. That was today's news. So that was one that didn't occur. There were a number of others mentioned.

There's a problem potentially with the mergers in my area between Northwest, Continental, American, and USAir, Delta, and United. In other words, what are the implications of all of these kinds of mergers? And how does predatory price-fixing fit into this?

The Department of Transportation has guidelines which—by the way, as good as I may think they are, some consumer groups think that they should be stronger, I suppose. And if there are any comments on that, I'd sure be grateful to you. We want to make sure the floor is set properly and will not deter price cuts which are competitive in nature. But everybody knows the old game of lowering prices to force out a competitor and then, of course, raising them again after the competitor is gone.

Now with respect to the joint ventures, there is something that both the Department of Justice and Transportation must carefully scrutinize and that's the dangers of price collusion, followed by diminished competition. Six airlines may become effectively three airlines as we meet this afternoon. Major plane routes may be served by only one such alliance. So there is danger or tacit market allocation among airlines which could allow price gouging and monopoly practice.

If you could, if it's appropriate for you to give us a 1-minute lecture about how close corporations can come to almost violating the Sherman/Clayton Antitrust Act, but not quite. I mean, there seems to be a fine art in the economic system where you can get close that it looks like it's a violation but maybe it isn't. And that raises another question that we have talked about in this committee. Do the antitrust laws in America need overhauling since they were written at the beginning of the century and there was no way to contemplate the huge global scope of potential antitrust activity at the time that that was done?

And then, of course, we want to review, if we can, the authorization for the Antitrust Division. It is my belief that—I'm trying to figure out how many lawyers you may have considering the number of cases that you already have. There's some mathematics in there that's eluding me.

So I thank you, Mr. Chairman, for being able to welcome our two distinguished first witnesses.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF HON. JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

As members of this Committee well know, I am and have always been a strong supporter of vigorous enforcement of the antitrust laws in every industry. Recent developments in the air transportation industry have prompted this hearing to investigate possible anti-competitive practices among air carriers. This hearing is extremely important, particularly at a time when consumers are faced with rising, often unreasonable prices and limited service in certain markets. Business travelers seem to be particularly hard-hit for high fares, and are seemingly penalized despite their frequency of travel on the major air carriers. In the end, consumers are left with fewer and fewer choices in air travel, and something must be done to change things.

In 1978, Congress deregulated the air transportation industry in order to promote a competitive climate and to bring reduced air fares and greater choices to the American consumer. The idea behind deregulation was to allow all, not just a few, of the players to start competing against each other in order to benefit consumers. But today, what we find is that only a handful of national air carriers have emerged as the primary players, and they seem more interested in reducing competition and consumer choice rather than with providing consumers with greater choices and lower rates.

There is growing concern that the industry is being monopolized, and significant evidence exists to support the concern that these large carriers are abusing their competitive advantage. Over the last year or so, consumers have witnessed sharp increases in unrestricted fares; exploitation by the airlines of non-discretionary travelers; and numerous complaints of predatory pricing by low-cost, low-fare carriers that entered the market around 1994–1996. Many of these carriers have failed due to anti-competitive conditions in the industry.

The recent announcement of "alliances" between four of the six largest air carriers in the nation, combined with the proposed partial merger between Northwest Airlines and Continental Airlines, should give pause to anyone who is concerned about competition in the air transportation industry. These so-called "alliances" could have the potential to drastically limit consumer choice; they could lead to de-facto price fixing among carriers; and could ultimately reduce competition even further by placing carriers outside of those alliances at a further disadvantage at the busiest hubs and along the most critical routes. We need to study these alliances closely and have a full understanding of what they will involve and how they will work. I am supportive of efforts by the Department of Transportation and Justice to monitor these proposals, and I urge the air carriers involved to comply fully with agency disclosure requests regarding the alliances.

Another concern involves the control by a handful of air carriers over the nation's busiest routes and hubs. A few big carriers have entrenched themselves at "fortress hubs"—as United has done at Denver, Northwest Airlines at Detroit, and Delta Air Lines at Atlanta—where they control as much at 80 percent of all flights. Such control makes it impossible for smaller carriers to gain even a foothold at those hubs. Moreover, this situation, combined with such accompanying practices as frequent flyer credits and override commissions to travel agents, produce situations of real monopoly power.

It is undisputed that there are many benefits to deregulation. The development of the hub-and-spoke networks have provided consumers with more extensive service, more frequent service, and lower fares. However, control of as much as 80 percent of all flights at a hub translates into significant power to charge higher and higher fares, engage in price discrimination, and reduce the quality and frequency of service by driving out competition by smaller, less-established carriers. These are the by-products of deregulation that we must investigate, and ultimately, fix.

I urge the Department of Justice to vigorously enforce the antitrust laws in the air transportation industry as vigorously as it has the information technology industry in the suit against Microsoft. Despite overwhelming evidence that major carriers may have been engaging in anti-competitive behavior over the last several years, the Department of Justice has yet to prosecute a single case against what appear to have been cases of flagrantly predatory competition by the major carriers against new entrants. I hope the Department of Justice will begin to take its role of enforcer in this industry much more seriously than it has so far.

In this vein, I applaud the Department of Transportation's efforts to monitor the industry by issuing proposed guidelines on what constitutes unfair exclusionary conduct by carriers, including predatory pricing. These guidelines may be a first step toward real enforcement. I understand that the guidelines are still in the comment stage, and I hope that the Department will grant all interested parties enough time to respond adequately to the proposed policies.

Critics of the guidelines argue that they will have a chilling effect on competition. We need to make sure that competitors have a clear understanding of what they may and may not due under the antitrust laws, but at the same time, not lay too heavy a hand on the free-flow of healthy, lawful competition. As a result, I hope the Department of Transportation will clarify the purpose and the potential impact the guidelines will have on the industry and competitive behavior therein, and modify them if necessary to have the intended effect of deterring anti-competitive behavior without chilling healthy competition.

Let me be clear. Those of us who are concerned about what is going on in the air transportation industry are not anti competitive. I, like most of my colleagues here, believe that an entity has a right to be competitive and to operate profitably. But at some point we are going to have to say that full and fair competition come before corporate profits. I welcome our witnesses to today's hearing, and look forward to hearing their testimony.

Mr. HYDE. Thank you, Mr. Conyers.

Our first panel consists of representatives of two of the Government agencies that deal with airline competition. On behalf of the Antitrust Division of the Department of Justice, we have the Assistant Attorney General for Antitrust, Joel Klein. Mr. Klein is a graduate of Columbia University and Harvard Law School. After law school, he clerked for Supreme Court Justice Louis Powell before going into private practice from 1976 to 1993. From 1993 to 1995, he served as Deputy Counsel to the President. In 1995, he moved to the Antitrust Division and he has been its head since July 1997.

On behalf of the Department of Transportation, we have its General Counsel, Nancy McFadden. Ms. McFadden is a graduate of San Jose State University and the University of Virginia School of Law. Before entering the Government, she was in private practice with the Washington office of O'Melveny and Myers. From 1993 through 1995, she was with the Department of Justice, serving as Assistant to the Attorney General and Principal Deputy Associate Attorney General. She has served in her current position since 1995.

We welcome both of you and certainly look forward to your testimony. Which of you prefers to go first?

STATEMENT OF JOEL KLEIN, ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. KLEIN. Thank you, Mr. Chairman, Mr. Conyers, members of the committee. I am pleased to be here today, and I want to commend the committee for holding what are clearly, timely and important hearings on one of the most critical industries in the United States, one in which there are a lot of issues that are certainly relevant to the Antitrust Division and the Department of Transportation.

Mr. CONYERS. Mr. Chairman, could the witness pull the mic closer?

Mr. KLEIN. Sure.

Mr. Chairman, I have written remarks, and rather than repeat them, I'd simply like to have them submitted for the record if that's acceptable?

Mr. HYDE. If you could make such remarks as you choose to make in or around 5 minutes give or take, that will leave time for questions, but don't feel bound by that. Thank you.

Mr. KLEIN. I'll be happy to—I'll take 3 minutes.

It's been 20 years, Mr. Chairman, since the Congress passed and President Carter signed the Airline Deregulation Act of 1978. I think that Act charted the right course and has been a success story in significant ways in terms of the development of the airline industry. But I think there are issues that remain and that will require careful scrutiny by the Antitrust Division of the Department of Justice, and as well, our colleagues at the Department of Transportation. I think both the chairman and the ranking member alluded to two of the key issues that we need to be focused on. One is the issue of hub dominance and some of the pricing and other strategic behavior that may be going on with respect to new entrants. And second, is the issue of consolidation within this industry, both in terms of domestic consolidation and in terms of international consolidation.

For our part at the Department of Justice, I think we have a record that we can be proud of in terms of antitrust enforcement with respect to the airline industry. Not so very long ago, we brought a major case against several of the airlines with respect to price signaling and the airline tariff publishing rules. We brought several actions involving slots as well as gates, that is landing rights as well as gates at various airports. We have looked hard at a number of international relationships, code shares, and other strategic alliances. We opposed, I think correctly, two key airline mergers in the 1980's, with respect to TWA/Ozark as well as Republic/Northwest, and we continue to devote significant resources to this field.

I have announced, and will repeat here, that we have a very thorough investigation going on, on the issue of hub dominance, new entrants, and the possibility of potential predatory behavior by dominant carriers. I don't want to suggest the fact that we're investigating something means in any way that there is a violation, but it reflects the seriousness with which we're treating this issue and will continue to treat this issue. I would expect that, at the conclusion of our very thorough investigation, we will, if we find appropriate action is warranted, we will take such action. If not, I will welcome the opportunity to come before the committee and explain precisely why we reached the conclusions that we did.

As to the second key issue, we are engaged in some very active and thorough reviews of airline alliances. As most of you know, we have before us, and will soon be commenting on, the American Airlines/British Airlines relationship which is pending before the Department of Transportation. We are, as well, looking at this point at the Continental/Northwest relationship, and I'm sure we'll be scrutinizing any of the other domestic alliances in terms of consolidation, code sharing, or other relationships that might come before us.

So let me stop there, Mr. Chairman, and say that I obviously welcome the opportunity to answer the committee's questions, and say what a delight it is to appear with my former friend, former—my current friend——[Laughter.]

Mr. KLEIN [continuing]. Former colleague and——[Laughter.]

Well, we worked together for so many years at the Justice Department that I feel, when she left, I lost not just a colleague but a friend, so——[Laughter.]

Mr. KLEIN [continuing]. I'm in somewhat of a state of mourning over that. But in any event, what a treat it is to appear here with General Counsel Nancy McFadden.

[The prepared statement of Mr. Klein follows:]

PREPARED STATEMENT OF JOEL KLEIN, ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. Chairman and members of the Committee, I am pleased to appear before you today to discuss important antitrust issues in today's airline industry. My testimony focuses on how we analyze airline mergers and domestic and international alliances.

ANTITRUST ENFORCEMENT IN THE AIRLINE INDUSTRY

Beginning in the 1970s, our nation has in several key industries acted on the recognition that competition serves consumers far better than economic regulation. In particular, the Airline Deregulation Act of 1978 moved the domestic air transportation industry from government regulation to a new era of competition.

Antitrust enforcement is critical to ensuring that the benefits of airline competition sought by Congress are realized by consumers. The Antitrust Division has maintained an active antitrust enforcement program in the airline industry for many years. During the 1980s, the Division recommended that the Department of Transportation (which had authority over airline mergers until 1989) disapprove two mergers, TWA/Ozark and Northwest/Republic, which involved the merger of the only two hub carriers at St. Louis and Minneapolis respectively. The merging carriers were the only airlines providing nonstop service between the hub city and smaller cities in the surrounding region (such as Bismarck, North Dakota, and Cedar Rapids, Iowa).

The Division has also moved aggressively to block acquisition of gates or slots that would eliminate existing or potential hub competition, including Eastern's proposal to sell eight gates to USAir at the gate-constrained Philadelphia International Airport and Eastern's proposed sale of slots and gates at Reagan Washington National Airport to United, which operated a significant hub out of nearby Dulles airport.

The Division has also challenged transactions involving international route authority. For example, with respect to the 1991 investment agreement between British Airways and USAir, the Department brought a civil action under Clayton Act §7 after we concluded that the transaction threatened competition in gateway city pairs and certain connecting city pairs (in particular, service between Northeast and Mid-Atlantic cities and London).

In addition to challenging transactions that adversely affect the structure of the airline industry, the Division's record demonstrates a commitment to detecting and challenging collusive practices. In 1992, we sued Airline Tariff Publishing Co. and eight major airlines, alleging that the airlines used the ATPCO electronic fare submission and dissemination system to fix prices. The consent decrees ultimately entered into banned improper signaling of future pricing intentions, which had cost consumers up to $2 billion in travel expenses.

Other conduct that we have challenged includes agreements on international fares undertaken outside the scope of the International Air Transport Association [1] and the solicitation by American President Robert Crandall of a price increase from one of his chief rivals, which we challenged as attempted monopolization.[2]

In addition to the law enforcement efforts that I have described, the Antitrust Division engages in competition advocacy in various matters before the Department of Transportation. Because DOT retains significant authority over competitive issues raised by agreements between U.S. and foreign carriers and has the authority to grant antitrust immunity to agreements between such parties, the Division often brings our expertise to bear in comments to DOT. Overall, we have developed an excellent working relationship with the Department of Transportation.

INTERNATIONAL ALLIANCES

As you can see, the Department of Justice has been working aggressively for many years on a number of fronts to preserve competition in the airline industry since deregulation. Let me turn now to the competitive implications of international aviation marketing alliances which, for the sake of simplicity, I will refer to as "code sharing." The term "code share" can mean as little as one airline allowing another airline to use its computer reservation system codes to sell seats on its planes on routes in which the second airline cannot compete, or as much as comprehensive integration of marketing and operations that involves joint decisions on price, capacity, schedules and other competitively sensitive matters.

Absent an express grant of antitrust immunity by the Department of Transportation, the antitrust laws apply fully to international code shares. To antitrust law enforcement officials, code-sharing agreements are simply forms of corporate integration that fall somewhere between outright merger and traditional arm's length interlining agreements. Like mergers and acquisitions, code-sharing agreements have the potential to be procompetitive—they can create new service, improve existing service, lower costs and increase efficiency, all to the benefit of the traveling public. By the same token, code sharing arrangements can be anticompetitive. They can result in market allocation, capacity limitations, higher fares, or foreclosure of rivals from markets, all to the injury of consumers. The ability to distinguish the latter from the former is crucial for aviation policy makers and antitrust enforcement authorities.

When we conduct an antitrust investigation of a code share, we always analyze the specific terms of each agreement on a case-by-case basis. In assessing the effect on competition, the first necessity is to define the relevant market and measure that market in terms of its participants and concentration. For any proposed code share, we ask whether the code-sharing partners are actual or potential horizontal competitors. From an antitrust viewpoint, the greatest threat to competition comes

[1] See, e.g., *United States* v. *Air Florida*, Crim. No. 84–260 (D.D.C. indictment filed July 11, 1984).

[2] See *United States* v. *American Airlines, Inc.*, 743 F.2d 1114 (5th Cir. 1984), *cert. dismissed*, 474 U.S. 1001 (1985).

when two of very few airlines that compete in a market enter into a code-sharing agreement in that market. The same concerns would be present if the two carriers were planning to merge. Any time two of very few airlines in a market act jointly, we are concerned about the effect on competition.

Having defined and measured the relevant market, the next issue we examine is the potential adverse competitive effects of the code share. Here we consider whether the code-share partners will both operate flights in the market and whether their capacity, scheduling, and pricing decisions will remain independent. By independent, I mean that the agreement is structured in a way that gives each carrier the strongest possible incentive to sell seats on the flights it operates rather than on those of its code-share partner, and to cut its prices and increase its operating capacity to gain market share.

Thus, one characteristic of a code-share agreement that can reduce antitrust concerns is independent pricing and marketing of seats on the shared flights. This is often accomplished with block-seat arrangements where the non-operating carrier purchases a fixed number of seats and bears the risk of loss if those seats are not sold. This is far from ideal, however, because the cost of these seats to the non-operator, which is the key determinant of the ultimate fare to the consumer, is set by agreement between competitors. On the other hand, we recognize that compared to joint sales and marketing, a block-seat arrangement can create some additional incentive for each partner to market its seats aggressively. Finally, it is also preferable from an antitrust perspective if any block-seat agreement is non-exclusive and the time period of the agreement is not unreasonably long.

If independent operations are not contemplated, so that the code-share agreement will reduce or eliminate competition in city-pair markets between the code-share partners, we must consider the extent to which entry into these markets by new competitors is likely to occur in response to anticompetitive behavior of the code-share partners. If sufficient and timely entry can be expected, then the code-share agreement would not be likely to create or facilitate the exercise of market power by the code-share partners. In this regard, an important factor we consider is whether an "open skies" bilateral exists in the market. Open skies means that new entry by a carrier is possible, although we will investigate how likely such entry would be in the event the code-share partners attempted to raise fares or reduce service. On the other hand, where entry is governed by a restrictive bilateral, the threat to competition of a code share on that city pair, particularly if the only two authorized carriers are involved, may be substantial.

And finally, if independent operations by the code-share partners in the relevant city-pair markets are not contemplated and sufficient and timely entry is not likely, we will consider evidence that one of the partners is likely to exit the market absent the code share, or that significant transaction-specific procompetitive efficiencies in serving other city pairs on a code-share basis outweigh the potential competitive harm in the overlap city pair.

In sum, we examine all of the facts and circumstances surrounding each code-share agreement and make our competitive assessment on a case-by-case basis.

How have we applied this analysis to proposed international code-share agreements that we have reviewed? The majority of proposed agreements present no horizontal competitive concerns. Others we have reviewed combined certain horizontal overlaps with significant end-to-end efficiencies. The Department's policy is to seek to exclude from a proposed code share those city pairs on which the proposed alliance partners are two of very few current or likely future competitors.

For agreements where antitrust immunity has been sought from the Department of Transportation, we have recommended that DOT "carve out" certain unrestricted fares involving these city pairs from the order granting antitrust immunity for the alliance agreement, provided that the carve out can reasonably be done without sacrificing important consumer benefits created by the alliance. Thus, we recommended that seven city pairs be carved out of the Delta/Swissair/Sabena/ Austrian alliance (Atlanta-Zurich, Atlanta-Brussels, Cincinnati-Zurich, New York-Brussels, New York-Geneva, New York-Vienna, and New York-Zurich), one for the American/Canadian Air alliance (New York-Toronto), two for the United/Lufthansa alliance (Washington-Frankfurt and Chicago-Frankfurt), and two for the United/Air Canada alliance (Chicago-Toronto and San Francisco-Toronto).

We believe that this carve out approach permits U.S. air passengers to obtain the benefits of increased efficiency and enhanced beyond-gateway service provided by these code-sharing agreements, while avoiding possible diminutions in gateway-to-gateway service or increased air fares as a result of an alliance. Of course, should a proposed code share present the potential for significant diminutions in gateway-to-gateway service while providing little likelihood for enhanced beyond-gateway service, we are fully prepared to recommend against the approval of the code-share proposal in its entirety.

I should make it clear that, although I have been discussing the way the Department of Justice evaluates international code shares, the Departments of Justice and Transportation share a common interest in protecting competition to ensure that consumers receive the best services at the lowest prices. To date, DOT has accepted all of the carve outs the Justice Department has proposed, with the exception of the four New York/Europe carve outs we sought for the Delta alliance. Even then, DOT required the alliance partners to report fare and other data that will allow us to review the effect of the alliance on price and service on these routes. If the data ultimately show that fares increase or service decreases on any of the four routes, DOT can remedy the harm by expanding the carve out accordingly.

In addition, DOT has prohibited alliance partners from participating in "fare coordination" activities under the auspices of the IATA. The Department of Justice has for years raised concerns to DOT about this type of international cartel activity, and we fully support DOT's efforts in this regard, which will clearly benefit international airline passengers.

DOMESTIC ALLIANCES

Alliances between major U.S. carriers, especially those that involve code sharing, are a relatively recent phenomenon. For years, there have been alliances between hub carriers and commuter carriers that serve those hubs. The first significant alliance between major U.S. carriers is the pending alliance between Continental and Northwest. We are also aware, of course, of the recently announced alliances between domestic carriers, American-US Airways and United-Delta. We are looking at all of these alliances currently. While I cannot comment on the specifics of any particular alliance, there are certain observations that can be made.

While our concern about domestic and international alliances is similar—we look to see whether there will be a lessening of competition that will harm consumers—there are likely to be some differences between domestic and international alliances that we will take into account. First, unlike some international alliances in which code-sharing may be the only way in which carriers can serve foreign markets, U.S. carriers have unlimited rights to expand their operations within the U.S. and thus are, at a minimum, potential competitors of one another. Second, unlike many international alliances in which U.S. carriers and their alliance partners do not compete broadly against one another because of laws and treaties, major U.S. carriers—even those with different regional strengths—often compete with one another in significant markets and sometimes are the only competitors in those markets, such as hub-to-hub-markets.

This is not to imply that all alliances between U.S. carriers are competitively problematic. Alliances can and do take many different shapes and forms, and the antitrust consequences of an alliance depend both upon the terms of the alliance and the carriers involved. Certain kinds of alliances may deal with matters that are not competitively troublesome. Even those alliances that involve matters that may competitively sensitive—such as code sharing—may involve carriers that do not have significant competitive overlap.

Yet, it is also true that some alliances may involve carriers that are substantial competitors, and code sharing that could be used as the means for co-ordinating service and fare offerings; such alliances start to look a lot like a merger. Thus, the Department of Justice will have to determine whether proposed code sharing alliances between U.S. carriers are likely to act as a disincentive for the alliance partners to enter markets operated by the other or to compete vigorously in markets that they both serve. In short, are such alliances likely to divide and allocate markets or produce high fares? The Department of Justice can make these kinds of assessments only after carefully reviewing the actual terms of each alliance agreement.

Alliances between major domestic carriers represent a new chapter in the history of air carrier agreements. The Department of Justice will fully investigate the competitive effects of these alliances and will challenge any one that we conclude would unreasonably restrain trade or tend substantially to lessen competition. We know that this is an area of profound interest to the Committee—and to the American public—and I am here to assure you that it is to us, as well.

I hope that I have helped the Committee understand the approach the Department of Justice is taking with respect to evaluating international and domestic alliances. I believe that the Division's analytical approach is sound, and that, to mix transportation metaphors, we are on the right track with respect to the manner in which we conduct our analyses in this area.

Mr. Chairman, this concludes my prepared remarks. I will be happy to answer any questions that you or other members of the Committee may have.

Mr. HYDE. Thank you very much, Mr. Klein.
And, Ms. McFadden.

STATEMENT OF NANCY E. McFADDEN, GENERAL COUNSEL, U.S. DEPARTMENT OF TRANSPORTATION

Ms. MCFADDEN. Thank you, Mr. Chairman. Mr. Conyers, and members of the committee. I welcome the opportunity to appear before you today and with my current friend and former colleague, Assistant Attorney General Klein, to discuss a very important issue. And I join with the assistant attorney general in commending you, Mr. Chairman, and, Mr. Conyers, and the committee for holding this hearing. It is a timely and an important issue for all Americans—the state of competition in aviation.

Let me say that, in general, the state of competition in the aviation industry is quite good. Let no one mistake our view, we join with the Justice Department in saying very loudly and very clearly, that deregulation has been an economic success story. This view is widely shared and is confirmed by all of our studies at the Department of Transportation. But airline deregulation works only when the airlines compete fairly with each other.

I'd like to focus today on the role the Department of Transportation plays, of course in tandem with the Justice Department, in ensuring healthy competition. I will address in brief aviation and alliances and competition with new entrant airlines.

My written testimony goes into much greater detail on this. And I would also ask that my testimony be submitted in full for the record. And I will summarize here. I will go into a little bit more detail than Mr. Klein, given that this committee is not our committee of jurisdiction, and you may not be as familiar with the authority that the Department of Transportation has. But I will be brief.

Airline alliances, of course as you know, involve cooperative arrangements between two or more airlines that may lie anywhere between the two extremes of traditional, arm's-length, interline agreements between carriers on the one hand, and full airline mergers on the other. Airline alliances typically include code-sharing arrangements and coordinated passenger and baggage check-in and handling. The most integrated strategic airline alliances can amount to virtual mergers, in essence, what Representative Conyers was talking about.

Let me outline the powers and responsibilities that the Department of Transportation has with regard to airline alliances. In brief, both the Departments of Transportation and Justice have the authority to review such transactions, determine whether they will harm airline competition and, if necessary, act to prevent such harm.

The Department of Transportation has the authority, as well, to protect consumers from unfair or deceptive practices. The Department of Transportation's authority, with respect to aviation alliances, differs depending upon whether the alliance is domestic or international. All international alliances, those involving a U.S. and foreign carrier, must seek prior approval from the Department of Transportation before they may be implemented. Generally, we have supported and promoted these international alliances. The Department examines the public benefits to be achieved by the alliance, as well as whether the alliance would substantially reduce or eliminate competition. In evaluating such alliances, we consult with and rely heavily upon the Antitrust Division. Now primary jurisdiction over domestic airline alliances resides with the Justice Department's Antitrust Division. Domestic airline alliances, whatever their form, do not require prior approval by the Department of Transportation—again, different from international alliances.

We, nonetheless, do have a responsibility to ensure that the U.S. aviation industry remains competitive, and we do have the authority to review such alliances. Our governing statute directs the Department in carrying out its responsibilities to consider the maintenance of airline competition and the avoidance of unreasonable industry concentration and excessive market domination as public interest goals. In addition, we have the authority and responsibility to prohibit unfair methods of competition in the airline industry.

We also have, as I mentioned, the responsibility to prohibit unfair or deceptive practices. Given their potential size and scope, the recently announced domestic alliances between our largest airlines warrant our close scrutiny. I, of course, cannot comment on the merits of any specific alliance, but let me tell you that we have, at the Department of Transportation, requested from American and U.S. Airways and from United and Delta, detailed material about their proposed alliances, including their own analyses of the expected effect of their alliances on domestic and international competition. And the airlines have been very cooperative. And we expect to receive the information we have requested from them in due time. The Northwest/Continental Agreement, as Mr. Klein stated, is already under review by the Department of Justice. And we are coordinating with the Department of Justice and providing them our views as well. We are working to ensure that our efforts at the Department of Transportation will complement those of the Justice Department and do not place unnecessarily redundant burdens on the parties.

I'd like to turn briefly, Mr. Chairman, to the subject that you mentioned, the subject of competition between established carriers and new entrant carriers. In the last few years, the Department has received an increasing number of complaints by smaller airlines that the largest airlines are using unfair tactics to keep them from getting a foothold in many local markets at hub airports. We've heard these complaints echoed by others including Members of Congress, business and leisure travelers, local communities, and travel agencies.

The Department has not moved precipitously in response to these concerns. We undertook a detailed analysis of the complaints brought to us. Our airline experts spent countless hours studying extensive airline company records, identifying patterns of behavior, and analyzing industry data. In developing our proposed policy, as the chairman mentioned, we conferred with expert staffs at both the Department of Justice and the Federal Trade Commission. And as a result of these efforts, we do have some concerns that unfair exclusionary practices by some major network airlines are preventing needed competition at hub airports, effectively denying more reasonable fares and affordable access to potential passengers across the country.

Under the statutory mandates Congress has enacted to preserve and foster competition in air travel, we concluded that we were obligated to act. We considered specific enforcement action, but in the end, we determined that the best approach was to set forth policy guidance on what, in the Department's view, constitutes unfair exclusionary conduct warranting departmental action. We set forth a proposed policy inviting comment and inviting dialogue from the industry, from consumers, from all stakeholders. When making final the policy, we will apply it prospectively, so that carriers are fully aware in advance of what we deem unfair exclusionary conduct.

Today, the Secretary is announcing that we will be extending the total comment period for this proposed policy. We received a request for an extension of time, and we will be providing an extension of time for comments from 90 days to 150 days so that we obtain the most useful comment possible.

We have, Mr. Chairman, no intention of re-regulating the airline industry as some have charged. Rather, we want to ensure that effective competition, which is the linchpin to the success of deregulation and the benefits it brings to consumers, is preserved. That is what we are seeking to do. That is what this administration aims at, and all the steps the Department of Transportation is taking with respect to the aviation industry. We are committed to ensuring competition in both the domestic and international aviation arenas.

With that, Mr. Chairman, let me conclude and say that I'd be happy to answer any questions that the committee might have. Thank you.

[The prepared statement of Ms. McFadden follows:]

PREPARED STATEMENT OF NANCY E. MCFADDEN, GENERAL COUNSEL, U.S. DEPARTMENT OF TRANSPORTATION

Mr. Chairman and Members of the Committee:

I welcome the opportunity to appear today with the Assistant Attorney for Antitrust, Department of Justice, to provide our perspective on the development of both domestic and international aviation alliances and to discuss their competitive implications for the aviation industry. The recent round of proposed alliances and codeshare agreements between a number of major domestic airlines makes your hearing particularly timely.

I applaud you and the rest of the Committee for bringing together individuals from the aviation industry as well as other interested parties to undertake an open and serious discussion about the state of competition in aviation across the United States. When Secretary Slater called for a dialogue on airline competition, he knew that Congress would be an essential voice.

Let no one mistake our view—deregulation of domestic air travel in 1978 was one of Congress' earliest and best efforts to bring powerful economic forces to bear on behalf of the traveler, the shipper, and the airline industry itself. This view is widely shared, and is confirmed by all of our studies at the Department.

Deregulation in the United States has expanded the pie for everyone. U.S. airlines carry about 270 million more passengers a year than under regulation. On average, domestic consumers pay a third less (in constant dollars) than they did twenty years ago. And, airline operating profits are also at record levels—totaling $20 billion in the last three years.

Airline deregulation works when the airlines compete fairly with each other. Consumers benefit when the airlines compete because, to win business, they have to offer more attractive service and fares. I want to focus my testimony today on the role the Department of Transportation plays, in tandem with the Justice Department, in assuring healthy competition, both in the area of airline alliances and also between established carriers and new entrants.

AIRLINES ALLIANCES TAKE MANY FORMS

Airline alliances involve cooperative arrangements between two or more airlines that may lie anywhere between the two extremes of traditional, arm's-length interline agreements between carriers on the one hand, and full airline mergers on the other. Airline alliances typically include code-sharing arrangements (whereby the partners may sell seats on each other's flights using their own two-letter designator codes in the computer reservations system) and coordinated passenger and baggage check-in and handling. They frequently include coordinated scheduling, uniform standards of service, and shared frequent-flier programs. Some involve travel agent commission programs; others use blocked-space arrangements. The most integrated strategic airline alliances can amount to "virtual" mergers of domestic or cross-border partners, including a degree of common ownership; coordination of pricing; standardization of equipment, services, and supplies; a sharing of Frequent Flyer programs; revenue and profit-sharing; and, for some international alliances, immunity from the antitrust laws.

The purposes for establishing a significant strategic airline alliance are many:

- To expand services to more markets in the least expensive way;
- To operate more efficiently—to increase revenues and to reduce costs, increasing profit margin;
- To gain market share through stimulation of new passengers and cargo and diversion of traffic from competitors; and
- To provide a seamless, hassle-free service that is attractive to travelers and shippers because it is functionally equivalent to service on a single carrier.

I would like to outline the powers and responsibilities that the Department of Transportation has with regard to airline alliances. DOT's authority differs depending on whether an alliance is domestic or international.

INTERNATIONAL AIRLINE ALLIANCES

All international alliances—*i.e.*, those involving a U.S. and foreign carrier—must seek prior approval from DOT before they may be implemented. Generally we have supported and promoted them. In some cases when requested, we have granted antitrust immunity to international alliances, recognizing that immunity would produce heightened, rather than lessened, consumer benefits in these cases.

DOT's authority over international airline alliances stems primarily from 49 U.S.C. 41308 and 49 U.S.C. 41309. Under section 41309, the Department has the authority to approve agreements between airlines that are not adverse to the public interest and do not substantially reduce or eliminate competition. The Department may approve an agreement that substantially reduces or eliminates competition if it finds that the agreement is necessary to meet a serious transportation need or achieve important public benefits that cannot be met or achieved, respectively, by reasonably available alternatives that are materially less anticompetitive. Section 41308 grants the Department authority to exempt parties to such an agreement from the operations of the antitrust laws to the extent necessary to allow them to proceed with the transaction, provided that the Department determines that the exemption is required in the public interest.

Alliances between large airlines that have come before DOT in recent years have involved U.S. and foreign airlines rather than two U.S. owned airlines. We believe that linking networks on different continents may allow airlines to create better quality and more competitive service in literally thousands of markets around the globe. Across the Atlantic, for example, relatively few city-pair markets can sustain nonstop service and even fewer can support competitive nonstop service. Few, if any, individual carriers can unilaterally expand their networks beyond their foreign gateways to other continents due to the capital costs, infrastructure limitations, and the immense operational capability that would be needed to develop their own networks there. Linking existing networks and flowing additional passengers between them is not just an efficient way for an airline to serve most international markets, it is often the only way. In addition, the Department has seen that alliances between U.S. and foreign airlines encourage foreign governments to reach open-skies agreements with us.

Since most multinational alliances are formed by linking networks in different parts of the globe, they tend to be more like end-to-end mergers. Thus, they tend to have limited service overlap while enabling improved service (improved coordination of connections) that is more competitive with other carriers and alliances in many markets. Such alliances are likely to be pro-competitive overall. This is not to say that all multi-national alliances are necessarily pro-competitive. We must weigh any adverse effects against possible consumer benefits. We must review each one on a case-by-case basis to determine whether or not consumers will benefit overall.

DOMESTIC AIRLINE ALLIANCES

As Assistant Attorney General Klein has detailed, the Justice Department's Antitrust Division, which enforces the antitrust laws, can examine any proposed domestic alliance and determine whether it is likely to cause a significant reduction in competition in any relevant market. If it finds that an alliance may reduce competition, it may file suit in Federal court. The Department of Transportation consults with the Justice Department during its antitrust deliberations and supplies data and policy input to the Department. Nevertheless, it is the Justice Department that makes the ultimate decision whether to challenge a given transaction under the antitrust laws in court.

Domestic airline alliances—whatever their form—do not require prior approval by DOT. In fact, until recently we have not had to consider broad-based combinations between two major U.S. airlines since our authority over domestic mergers was transferred to the Department of Justice in 1989.

The Department of Transportation, nonetheless, does have a responsibility to ensure that the U.S. airline industry remains competitive and has the authority to investigate domestic alliances. Our governing statute directs the Department in carrying out its responsibilities to consider the maintenance of airline competition—and the avoidance of unreasonable industry concentration and excessive market domination—as public interest goals. (49 U.S.C. 40101(a)(9), (10), and (12)). In addition, we have the authority and responsibility to prohibit unfair methods of competition in the airline industry, which empowers us both to enforce the antitrust laws and to block anticompetitive practices that violate antitrust principles, even if they do not violate the antitrust laws. (49 U.S.C. 41712.)

In October 1994, Continental and America West formed the first wide-scale domestic alliance between two major U.S. airlines. Their agreement provides for code-sharing, shared frequent-flier programs, coordination of connecting services, and limited (non-controlling) common ownership. Subsequently, Northwest and Alaska entered into a similar alliance (but without equity ownership.)

There are already a large number of simple domestic code-share arrangements between regional carriers and the major airlines. Some regional carriers have relationships with more than one major airline, and these relationships account for the bulk of regional carriers' traffic. In 1997 the 50 largest regional carriers enplaned 65.6 million passengers. Of these, 62.5 million passengers, or over 95 percent, were enplaned by carriers with a code-share relationship with a major carrier. To date, these arrangements have not raised competitive concerns and, as a matter of regulatory policy, we have not examined them. Of course, if competitive concerns about these airline relationships were to arise, we would examine the circumstances to determine what action, if any, we should take.

The recently announced domestic alliances between our largest airlines obviously involve arrangements much larger in scale, and require a different approach. Northwest and Continental, the fourth and fifth largest U.S. carriers, would offer code-sharing service, coordinate connecting schedules, share frequent-flier programs, and integrate certain common activities. In addition, Northwest proposes to purchase an equity stake in Continental.

American and U.S. Airways, the second and sixth largest U.S. airlines, have announced an agreement to share their frequent-flier programs, and their intention to negotiate a broader code-sharing alliance agreement in the near future.

Finally, United and Delta, the first and third largest U.S. airlines, have announced an agreement to engage in code-sharing alliance arrangements, reciprocal frequent flyer programs, and other areas of marketing cooperation. Initial implementation is planned for domestic routes.

Given their potential size and scope, these proposed domestic alliances warrant our close scrutiny. Consequently, we requested from American and U.S. Airways on April 29—and United and Delta Airlines on April 30—detailed material about their proposed alliance, including their own analyses of the expected effect of their alliance on domestic and international competition. We established a 20-day deadline in order to speed our review process.

The Northwest/Continental agreement is already under review by the Department under our continuing fitness procedures because of the change in ownership, and by the Antitrust Division of the Department of Justice. I can assure you there will be no overlap in our analytical processes, and that our efforts will complement those of the Justice Department.

We intend to analyze the potential effects of these large domestic alliances. In particular, we gauge whether and to what extent they may reduce domestic competition, both in specific markets and overall. We will consider the impacts and implications of these alliances for the competitive capabilities of other major airlines, of new entrants, and of regional carriers. Each agency has the authority to take corrective action if. . . .

THE COMPETITIVE CLIMATE FOR NEW ENTRANT AIRLINES

The proposed alliances also raise concerns about the continued ability of new entrants to enter underserved or overpriced markets. We intend to examine the effects of any large domestic alliances on new entrants. Even without the alliances, we have observed practices of major carriers at some hub airports that may be stifling needed competition in other ways.

In the era of airline deregulation, the major airlines have developed hub-and-spoke networks and have created twenty hub airports around the country. Hubbing creates advantages for many travelers, since it gives travelers at the hub cities many more flights and enables airlines to offer more service in markets without enough traffic to sustain non-stop service. Hubbing has the disadvantage, however, of making effective competition in the hub's local markets very difficult, thereby allowing the hub airline to charge higher fares. A hub airline has competitive advantages in those markets because it operates the most flights and can offer travelers a more attractive frequent flyer program and travel agencies more attractive incentive commission programs. As a result, most local hub markets have little competition, and the passengers in those markets pay relatively high fares. New service by a low-fare airline is likely to be the only way that many hub markets will ever benefit from competitive airline service.

A low-cost airline's entry into a local hub market can produce enormous consumer benefits. For example, the Department's April 1996 study of low-cost airlines examined the effects of the low-fare service offered by Morris Air and Southwest, which acquired Morris, in a number of Salt Lake City markets. The traffic in those markets tripled, while the average fares in those markets dropped by about fifty percent when fares in other Salt Lake City markets were increasing somewhat. As a result, by late 1995 the average fares in the markets served by Morris and Southwest were only one-third the level of fares in other Salt Lake City markets.

In the last few years, however, the Department has received an increasing number of complaints by smaller airlines that the largest airlines are using unfair tactics to keep them from getting a foothold in many local markets at hub airports. Others have echoed these complaints—Members of Congress, local communities, travel agencies, and business and leisure travelers. Let me give you one example as a concrete idea of what we have heard and what we have found.

When a new entrant started operation in one major city-pair market, the dominant hub carrier initially did not slash its fares and increase capacity in response to the new service. However, after a few months the hub carrier matched the newly offered $49 one-way fare and added more seats. Before this move, thirty percent of the hub carrier's traffic—about 13,000 passengers—paid fares of $325 to $350, while fewer than 1,500 passengers paid fares of $75 or less, during a three-month period. After the hub carrier dropped its fares and increased capacity, it carried almost 50,000 passengers who paid no more than $75 and fewer than 1,000 passengers who paid fares of $325 to $350. In a three-month period after the new entrant left the market, the hub carrier sold fewer than 1,000 seats at fares under $75, carried only about 3,000 passengers paying fares of $325 to $350, but carried over 12,000 passengers paying fares of $350 to $375.

The Department has not moved precipitously in response to this type of complaint. We undertook detailed analysis of the complaints brought to us. Our airline experts spent countless hours studying extensive airline company records, identifying patterns of behavior, and analyzing industry data. In developing our proposed policy, we conferred with expert staffs at the Department of Justice and the Federal Trade Commission. These efforts confirmed our concern that unfair exclusionary practices by some major network airlines are preventing needed competition at hub airports, effectively denying more reasonable fares and affordable access to tens of millions of potential passengers across the country.

Under the statutory mandates Congress has enacted to preserve and foster competition in air travel, we concluded that we are obligated to act. We considered enforcement action. But in the end, we determined (in fact at the suggestion of some of the airlines) that the best approach was to set forth policy guidance on what, in the Department's view, constitutes unfair exclusionary conduct warranting Departmental action.

Reviewing the continuum of carrier behavior over several years, we have shaped a policy that targets only the most egregious conduct—when a combination of factors in a carrier's behavior cannot be adequately explained as good economics unless they eliminate competition. We will apply a final policy prospectively, so that carriers are fully aware in advance of what we deem unfair exclusionary conduct. And the Secretary decided to issue a proposed policy for public comment so that we could engage in the kind of dialogue we are having here today. We have no intention of reregulating the airline industry, as some have charged. Rather, we want to assure that effective competition—which is the linchpin to the success of deregulation and the benefits it brings to consumers—is preserved.

In sum, we are convinced our proposed enforcement policy comes within the language of our statute, is consistent with the courts' interpretation of the scope of our statutory authority and, most importantly, carries out Congress' determination that the success of deregulation requires us to preserve competition and stop anticompetitive behavior. We look forward to analyzing the comments filed by all interested parties.

REVIEW OF AIRPORT PRACTICES

Mr. Chairman, I know from your testimony April 30 before the Transportation and Infrastructure Committee about your concern that airports may be stifling head-to-head competition in various ways that favor the larger incumbents, particularly at their hub facilities. We are also concerned. The effects of long-term gate lease arrangements at hub airports with a dominant carrier, use of Passenger Facility Charge (PFC) proceeds to construct gates for long-established carriers, and the required use of incumbent carriers for aircraft servicing are examples of the sorts of practices that can interfere with competitive service. To address these questions, we have constituted work groups at the FAA and in the Office of the Secretary to gather data and assess whether action is called for in these or other areas. We at the Department are determined to preserve the fruits of the 1978 de-regulation of the domestic airline industry.

CONCLUSION

On the dual questions of domestic airline alliances and the competitive climate for new entrant airlines, the Department of Transportation is working hard to preserve the benefits of competition and to protect the interests of consumers. As Secretary Slater has said:

> Our responsibility at the Department of Transportation is to ensure that every airline—large or small, new or established—has the opportunity to compete freely. That is what deregulation is supposed to be all about—a fair chance to compete.

This Administration is committed to ensuring competition in the domestic—and international—airline business. That is why we have worked so hard to secure 30 Open Skies agreements; we have issued our proposed competition policy; we have granted 85 slot exemptions to provide valuable new air serve and competition, and we have just undertaken the review of airport practices I just described. We look forward to working with Congress to ensure that the aviation system continues to grow and that consumers continue to benefit.

Thank you Mr. Chairman. This completes my prepared statement, and I would be pleased to respond to your questions and those of the Committee.

Mr. HYDE. Thank you both very much.

Ms. McFadden, on October 1st of 1997, my colleague, Congressman Jesse Jackson, Jr., and I sent a lengthy letter to several administration officials, including Secretary Slater, regarding a third airport in Chicago. To my knowledge, we have not received a reply. Do you have the foggiest idea of when we will, or if we will, receive a reply?

Ms. MCFADDEN. Mr. Chairman, a very legitimate question. The answer to "if" is, "Yes, of course, you will receive a response, and we apologize for the length of time it has taken." I expect, in consulting with my colleagues at the FAA, that you will receive a response in the very near future. I should say that the letter, as you noted, was directed to a number of people in the administration. And the attempt is being made to produce a comprehensive and coordinated interagency response——

Mr. HYDE. I shouldn't have——

Ms. MCFADDEN [continuing]. To your report.

Mr. HYDE [continuing]. Written to so many people, obviously. [Laughter.]

Ms. MCFADDEN. But we expect that a full report and a comprehensive reply to the letter that you and Congressman Jackson wrote will be forthcoming in the next few weeks.

[The information referred to follows:]

CONGRESS OF THE UNITED STATES,
Washington, DC, October 1, 1997.

Hon. JANET RENO, *Attorney General,*
United States Department of Justice,
Washington, DC.

Hon. RODNEY SLATER, *Secretary,*
Department of Transportation,
Washington, DC.

Hon. CAROL M. BROWNER, *Administrator,*
U.S. Environmental Protection Agency,
Washington, DC.

Hon. JANE GARVEY, *Administrator,*
Federal Aviation Administration,
Washington, DC.

Hon. KATHLEEN A. MCGINTY, *Chair,*
Council on Environmental Quality,
Washington, DC.

Re: Serious problems with Federal Government policies and actions toward the development and need for commercial air transportation airport facilities in the metropolitan Chicago area

DEAR ATTORNEY GENERAL RENO, SECRETARY SLATER, ADMINISTRATOR GARVEY, ADMINISTRATOR BROWNER AND CHAIRPERSON MCGINTY:

We are writing you collectively about a major problem that involves enforcement and oversight of a number of interrelated federal laws and programs by your respective agencies. The problem relates to the federal government's plans and policies toward the development and need for commercial air transportation airport facilities in the metropolitan Chicago area.

We are writing to both express our concerns that your agencies are not only failing to properly enforce relevant federal laws as they relate to this problem—but also to voice our worry that some of your agencies may actually be active participants in fostering and encouraging violations of federal laws and policies relating to this problem. We hope this is not true, but we must express our concern.

Please excuse our lengthy list of questions, but, as is often said, the devil is in the details. What we are seeking are hard answers—not only as to the technical questions we raise, but also as to why your agencies are not taking action to address and correct the problems we are raising.

Nor, respectfully, do we seek excuses. The problems here are serious and require urgent attention. We believe that your agencies should be able to address and correct these problems with the laws currently on the books. Where you believe that these problems cannot be addressed within your existing individual authority or the collective authority of the Administration, we ask you to provide specific suggestions for whatever additional authority you need. But we respectfully ask that you use your existing powers now to address these and correct these problems.

A SUMMARY OUR OUR CONCERNS

Our concerns focus on the federal government's regulatory, financial and developmental roles relating to the development of commercial airport facilities in the metropolitan Chicago area for the next 20 year period—specifically to the year 2020. The following is a brief summary of the principal areas of our concerns:

1. Toxic Air Pollution.

O'Hare Airport—currently operating at over 900,000 landings and take-offs per year—has been acknowledged by the Illinois Environmental Protection Agency as one of the largest sources of toxic air pollution in the State of Illinois. Residential communities near the airport experience ambient concentrations of toxic air pollution—*e.g.*, benzene and formaldehyde—that anecdotal evidence suggests is several hundred times higher than would be allowed in the air emissions for a toxic Superfund site.

Despite this serious toxic air pollution problem, neither state nor federal agencies have provided surrounding communities with data and information as to the exact types, quantities, and concentrations of the toxic pollutants coming from O'Hare operations. Nor have state or federal agencies provided these residential communities with information as to the health protective levels of these toxic pollutants in these residential communities. Finally, neither state nor federal officials have undertaken control programs to reduce these toxic pollutant emissions and ambient concentrations to health protective levels in the residential communities surrounding O'Hare.

Unless you take action now to address this problem, it is going to get much worse. Currently pending as an integral component of the Metropolitan Chicago Regional 2020 Transportation Plan (being drafted pursuant to the ISTEA Act) is a proposal to increase O'Hare operations by an *additional* one million or more flights per year. (See discussion below). Yet no one at the federal or the state governmental levels has evaluated or disclosed to the public what the impacts as to toxic air quality will be in the communities surrounding O'Hare.

Moreover, the dangerous fantasy of this proposal to add an additional one million flights per year at O'Hare is being fueled by development and funding policies of the federal government—especially the FAA—through a variety of regulatory and funding programs. These development and funding activities include:

1) Affirmative FAA policies to incrementally expand the capacity of O'Hare through a variety of interrelated physical (*e.g.*, funding or approving the funding of construction projects) or non-physical (*e.g.*, changes in air traffic procedures) expansion programs; and
2) Failure of the federal government to use its regulatory and funding authority to encourage and support a much less environmentally destructive alternative to a vast O'Hare expansion—namely construction of a south suburban regional airport for metropolitan Chicago.

Despite the severe *current* toxic air pollution problem at O'Hare, FAA continues to develop and support (through both funding and regulatory programs) various incremental steps which are increasing toxic air emissions from O'Hare. Associated with these physical and non-physical FAA supported expansions are major proposed expansions of surface road facilities (*e.g.*, airport related expressway expansions and roadway expansions which will both enable the air traffic expansion, and will themselves contribute to the total toxic air pollution burden imposed on the residential communities around O'Hare).

By actively supporting the vast O'Hare expansion option through these incremental expansion actions, the federal government is becoming a major force in making the vast O'Hare expansion option—and its associated toxic air pollution impacts—a *fait accompli* while necessarily harming the potential for development of the new south suburban airport. (See discussion below.)

None of these toxic air pollution impacts—either of an expanded O'Hare or the impacts from a far less destructive south suburban airport—have been the subject of either comprehensive EIS analysis or more structured regulatory analysis accompanying various expansion actions.

2. Noise Pollution.

The addition of a million flights at O'Hare will have enormous noise impacts on the quality of life of the residential communities surrounding O'Hare. We have asked the FAA for detailed information on a number of issues relating to noise and O'Hare and we have yet to receive an answer. Needless to say, the very same incremental O'Hare expansion program currently being supported by FAA has negative impacts on the quality of life around O'Hare and is being ignored. This is occurring while piecemeal elements of the program are put in place without comprehensive analysis required by a variety of federal laws, including NEPA and related CEQ regulations.

3. The increased safety risks of several hundred thousand additional flights at O'Hare.

By affirmatively funding and approving the funding of physical construction at O'Hare while at the same time instituting changes in air traffic control procedures designed to increase operations at O'Hare, the FAA is deliberately reducing the existing margins of safety currently in place at O'Hare. Reducing separations between aircraft, reducing runway occupancy time, allowing increased use of "wet" stops, allowing the use of land and hold short operations in IFR or night conditions—various techniques either employed by or under consideration by the FAA to increase capacity—all reduce the available margins of safety and reaction time in O'Hare operations.

4. The Related Role of The 2020 Plan Surface Transportation Changes.

The metropolitan Chicago area is currently in the process of preparing its 2020 Regional Transportation Plan. Included in that plan are a number of O'Hare related surface transportation proposals which are designed to enhance the capacity of aircraft operations at O'Hare. O'Hare's current road access facilities constrain operations and passenger loadings to roughly current levels of operations. By approving surface transportation construction which will allow O'Hare to expand operations, the 2020 Plan will bias the ultimate choice in favor of O'Hare expansion and against the new regional airport. Further, the toxic emissions related to expanded O'Hare related road traffic will combine with the toxic emissions from the vast increase in air operations to further exacerbate conditions in O'Hare area residential communities.

From an economic and planning standpoint, these proposed O'Hare area road facilities do not make sense. There is no evidence that these facilities have been sized to meet the demand for 73 million enplanements at O'Hare. Conversely, if the incremental growth of 40 million new enplanements is handled at a new south suburban airport, there will likely be no need for the facilities at their current scope of design.

5. Anti-competitive Effects of an Expanded Fortress O'Hare.

Numerous federal studies have shown that major carriers establish "Fortress Hubs" in major cities to squeeze out competition and charge business travelers high monopoly fares. "Fortress O'Hare" is a prime example—United and American dominate over 90% of the market and their pricing of next day business fares moves in lockstep.

These kinds of lockstep pricing changes, both at O'Hare and nationally, are openly announced. Yet, the administration takes no antitrust enforcement steps against this coordinated pricing behavior. Worse, rather than encourage the pro-competitive benefits of a third airport, the Administration takes numerous steps, including PFC approvals, AIP grants, and CMAAP capacity increases, that encourage a larger O'Hare and discourage a third airport. These actions serve only to increase United and American's monopoly power.

QUESTIONS AND REQUESTS

We have a number of related concerns and questions that focus on airport development in the metropolitan Chicago area.

1. Need for information in electronic database format relating to ATOMS, SDRS, and AQSP data relating to delays at the Nation's major airports and especially O'Hare International Airport.

We have asked for this information before verbally, but perhaps because of a misunderstanding, only partial and limited data has been supplied. Please provide us in electronic format (if possible):

- The Air Traffic Operations Management System (ATOMS) data compiled by the FAA for the Nation's largest airports. We would like that data as far back as possible, and we would like included in the data provided all available information as to the cause of any particular delay.
- The SDRS and AQSP data for the same airports. Over the years, the airline industry or its individual members has provided the FAA with data regarding airlines reported delays by segment of flight. In 1988 the FAA referred to this delay data system as the "Standardized Delay Reporting System (SDRS)." The 1996 FAA Airport Capacity Enhancement Plan refers to this delay data system as the "Airline Service Quality Performance (AQSP)" data.

2. The need for FAA documents and explanation regarding Year 2010 and Year 2020 aviation forecasts for O'Hare and Midway.

As mentioned above, the Chicago metropolitan area is currently preparing a Regional 2020 Transportation Plan in order to comply with federal requirements of the federal Internodal Surface Transportation Efficiency Act of 1991. Central to compliance with that Act is a need to examine the environmental, economic, and transportation impacts of placement of commercial air transportation facilities in the metropolitan area.

In conducting the analysis, the State of Illinois, the Northeastern Illinois Planning Commission (NIPC), and the Chicago Area Transportation Study (CATS) are relying on a regional aviation forecast that assumes two different alternatives to accommodate a 2020 enplanement forecast of 73 million enplanements.

The first alternative is to handle all 73 million enplanements at O'Hare alone.

The second alternative is to handle the 73 million enplanements with a combination of O'Hare and a new south suburban regional airport.

We have several questions and concerns.

Does the FAA and the U. S. Department of Transportation agree or disagree with the 2020 enplanement forecast being used by the State of Illinois and local planning agencies? If you disagree, please explain the factual and analytical basis of your disagreement. If you disagree, please provide your forecast of enplanements and operations for 2020.

The FAA has over the last few years published a series of confusing forecasts for O'Hare and Midway that have been inconsistent and unexplained. We have compared the 2005 and 2010 FAA forecasts over the last several years and are confused.

FAA Forecasts	Year	O'Hare Enplanements	O'Hare Operations
1992 ACE Plan	2000	41,722,000	827,000
1993 ACE Plan	2005	42,250,000	849,000
1994 ACE Plan	2005	46,991,000	848,000
1995 ACE Plan	2010	55,945,000	966,000
1996 ACE Plan	2010	50,133,000	1,168,000
		Midway Enplanements	Midway Operations
1992 ACE Plan	2000	5,898,000	383,000
1993 ACE Plan	2005	7,442,000	408,000
1994 ACE Plan	2005	3,287,000	239,000
1995 ACE Plan	2010	10,830,000	372,000
1996 ACE Plan	2010	6,946,000	329,000

Your 1995 ACE plan forecast for O'Hare and Midway for 2010 was as follows:

	Enplanements	Operations
O'Hare	55,945,000	966,000
Midway	10,830,000	372,000
Total	66,775,000	1,338,000

Your 1996 ACE plan forecast for O'Hare and Midway for 2010 was as follows:

	Enplanements	Operations
O'Hare	50,133,000	1,168,000
Midway	6,946,000	329,000
Total	57,079,000	1,497,000

Please provide the supporting documentation and analytical basis for the year 2010 forecasts in the 1995 and 1996 ACE Plans and explain the reasons for the differences.

3. What physical facilities at O'Hare would be necessary to accommodate the enplanements and operations forecast for the year 2010 in the 1995 ACE Plan?

4. What physical facilities at O'Hare will be necessary to accommodate the enplanements and operations forecast for the year 2010 in the 1996 ACE Plan? What data led FAA to conclude that enplanements per operation would be less in

the year 2010 forecast in the 1996 ACE Plan than in the 1995 ACE Plan? What data led FAA to conclude that operations would increase to 1,168,000 in the 1996 ACE Plan.

5. What physical facilities at O'Hare will be necessary to accommodate the enplanements and operations forecast for the year 2020 by the State of Illinois, NIPC and CATS—*i.e.*, 73 million enplanements—if no new regional airport is built?

6. How many new and how many total flight operations will have to occur at O'Hare if O'Hare is required to handle all 73 million enplanements? Please provide the data and calculations supporting your assumptions as to enplanements per operation.

7. If the FAA has a different 2020 forecast than the 73 million enplanements forecast for 2020 at O'Hare—please provide it and describe the facilities that will be needed at O'Hare.

8. The 1991 through 1995 FAA Airport Capacity Enhancement Plans show an O'Hare with two new runways and a number of other capacity increasing physical elements. The 1996 ACE Plan pointedly omits any mention of new runways at O'Hare.

Yet the FAA's official Plan of Integrated Airport System (NPIAS) and its computer update specifically lists new runways at O'Hare scheduled for construction in 2001.

Are new runways needed to handle the traffic growth forecast by the FAA for the year 2010? Are new runways needed to handle the traffic growth forecast by the State, NIPC and CATS for the year 2020?

9. Integrated into the capacity enhancement projects spelled out in the Capacity Enhancement Report issued by the Capacity Design Team for O'Hare in 1991 are a series of related efforts by the FAA to expand capacity through changes in air traffic control procedures. See *e.g.*, FAA's 1996 ACE Plan at 44–46 discussing the Chicago Metroplex Airspace Analysis Project (CMAAP). See also discussion of other procedures in Chapter 5 and technology developments in Chapter 6 of the 1996 ACE Plan. Please quantify on an incremental basis both the hourly throughput increase, the daily throughput increases, and the yearly capacity increases at O'Hare that will be produced by these changes under the following conditions:

- CMAAP recommendations alone without any of the physical alterations proposed in the 1991 O'Hare Capacity Design Team Report.
- CMAAP recommendations in combination with the physical alterations proposed in the 1991 O'Hare Capacity Design Team Report.
- CMAAP recommendations in combination with the changes in ATC operational procedures as described in Chapter 5—and/or the technology changes discussed in Chapter 6—of the 1996 Ace Plan without any of the physical alterations proposed in the 1991 O'Hare Capacity Design Team Report.
- CMAAP recommendations in combination with the changes in ATC operational procedures as described in Chapter 5—and/or the technology changes discussed in Chapter 6—of the 1996 Ace Plan with the physical alterations proposed in the 1991 O'Hare Capacity Design Team Report.

10. O'Hare currently operates under an hourly flight limit of 155 operations per hour known as the High Density Rule (HDR). Last year the FAA—at the urging of Mr. Hyde and the communities around O'Hare—declined to lift or change the HDR limitations at O'Hare. Please describe—in quantitative terms of operations per hour and on an incremental basis—the changes in hourly throughput and its impact on the HDR limit that would occur as a result of the physical and operational changes set forth in item 9 above.

11. Please provide the hourly operations rates necessary—under both IFR and VFR conditions—to handle the FAA's forecast enplanement load for the year 2010 assuming:

a) the enplanements per operation assumed by FAA in the 1996 ACE Plan; and b) that the historical ratio of enplanements per operation over the last five years remains in place at O'Hare. Please provide the hourly operations rates necessary—under both IFR and VFR conditions—to handle the 73 million enplanements forecast by the State of Illinois, NIPC and CATS for the year 2020 under the same assumptions.

12. Please explain how FAA keeps records of any safety related incidents at O'Hare. Please provide all data regarding safety related incidents at O'Hare. Will reduced separation requirements, reduced runway occupancy times or other reduc-

tions in aircraft processing time be necessary to accommodate the levels of operation forecast by FAA at O'Hare for the years 2000 and 2020? If so, please explain.

For all your responses to our questions, please provide the specific backup data, reports, and analyses supporting your responses.

3. Questions about air quality issues.

The sheer volume increase in projected flight operations for the years 2010 and 2020 raise serious air quality concerns. We have several questions about air quality.

- Have the air quality impacts—including the impacts on toxic air pollutants—of the increases in flights projected at O'Hare in 2010 or 2020—projected either by the FAA or by the State of Illinois, NIPC, and CATS—been calculated and disclosed to the public?
- What are the *current* baseline conditions at O'Hare and in the vicinity of O'Hare relating to the generation and concentration of toxic air pollutants from O'Hare operations and related vehicle traffic and associated stationary sources?
- Specifically, what toxic substances are currently generated by such operations and what are the respective total weight and concentrations of these substances—*e.g.*, formaldehyde, benzene and other compounds from O'Hare operations and related vehicle traffic and associated stationary sources?
- What are the current concentrations of these toxic substances in the air and on the ground in the residential communities around O'Hare at current levels of air traffic?
- What exposure pathways impact children and adults exposed to such toxic substances in surrounding communities?
- What will be the change in total loadings and concentrations of toxic substances from O'Hare operations and related vehicle traffic and associated stationary sources in order to carry the enplanements forecast for 2010 and 2020?
- What are the levels of cancer risk and non-carcinogenic risk deemed health protective in residential communities for the toxic compounds you have identified?
- Please consider all appropriate pathways including inhalation, ingestion and dermal contact.
- Do current concentrations of these toxic substances in residential areas around O'Hare exceed health protective levels?
- What differences in emissions and ambient air quality at O'Hare and surrounding residential neighborhoods will result as to toxic pollutants if the incremental growth from 33 million operations to 73 million operations (*i.e.*, 40 million enplanements) is handled at a new south suburban regional airport as opposed to O'Hare?
- Please describe the relevant and relative legal authorities of the FAA, USDOT, and USEPA in controlling and reducing the toxic emissions from O'Hare operations and related activities so that concentrations of these toxic pollutants in surrounding communities are reduced to health protective levels.
- What changes in surface transportation facilities—*e.g.*, roads, expressways, etc.—will be needed to handle the surface transportation to accommodate 40 million new enplanements at O'Hare or to handle the load forecast by FAA for 2010 and 2020? Will different or smaller facilities be needed in the O'Hare area if the incremental growth is accommodated at a new south suburban airport?

4. Related Concerns about the inadequacy of the draft 2020 Regional Transportation Plan for Metropolitan Chicago.

Currently under discussion is a Regional Transportation Plan for Metropolitan Chicago that has two radically different alternative assumptions:

The first assumption is that in 2020 all 73 million enplanements will be accommodated at O'Hare.

The second assumption is that the 73 million enplanements will be split in some as yet undefined way between O'Hare and a new south suburban airport.

To our knowledge, there will be dramatically different environmental and public effects and impacts on O'Hare communities depending on which alternative is chosen. (See our questions and comments above.) Similarly there will be dramatic differences in local surface transportation requirements and environmental impacts depending on which alternative is chosen.

Despite these differences in environmental and public health impacts, we see no evidence that NIPC or CATS has examined the environmental impacts of either of these alternatives, as well as the "no-build" option for these facilities.

In light of these concerns, we have the following questions:

- What is the regulatory or funding approval authority of the USDOT, the USEPA, or any other federal agency over the 2020 Regional Transportation Plan and the facilities contained therein?
- To what extent can USDOT or EPA withhold approval of funding relating to the facilities listed in the 2020 Regional Transportation Plan until these deficiencies—*e.g.*, the gross lack of environmental and public health analysis as to the O'Hare 73 million enplanement option and related surface transportation projects—are corrected?

5. *Questions and Concerns about piecemeal expansion at O'Hare and FAA's role in avoiding comprehensive environmental analysis of these piecemeal expansion elements.*

Historically, FAA's environmental scrutiny of airport development was coordinated through the FAA's Master Planning process—whereby the regional air transportation needs and alternatives for a 20 year time horizon would be discussed and evaluated in a comprehensive EIS.

It has been obvious to us for some time that FAA has been taking federal action in either approving changes in the Airport Layout Plan or in giving approvals for either "impose" or "use" authority to Chicago for collection and expenditures of PFC funds.

Many of these FAA actions relate to individual or group projects which—when taken as a whole—are designed to increase the capacity of O'Hare to handle further air traffic operations.

Similarly, FAA has been taking individual air traffic control actions which—when used in conjunction with physical changes at the airport—are designed to increase the capacity of the airport to handle additional flight operations. These actions include changes in the land and hold short requirements, proposed changes in air traffic routing through CMAAP or the proposed TRACON traffic changes, and changes for increases in traffic loads during IFR conditions.

All of these actions are being directed toward a central goal—increasing the capacity of O'Hare. Yet none of these actions have been accompanied by a comprehensive EIS examining the full scope of environmental impacts of the long term capacity increases and the alternatives to such an increase in capacity at O'Hare. Indeed many have not been accompanied by any environmental analysis at all or have been accompanied by crabbed abbreviated environmental assessments which fail to examine the cumulative impact of the overall capacity expansion.

This failure to perform a comprehensive EIS governing these piecemeal impacts is not only a problem for communities neighboring O'Hare and the environmental impact of that expansion on these communities. This piecemealing is using FAA policy to force a physical choice—and make the choice await accompli—between two very different regional airport alternatives: a vastly expanded O'Hare vs. a new regional airport operating in tandem with O'Hare. By using a variety of FAA regulatory and financial controls in this piecemeal fashion, FAA is forcing FAA's choice on the region—i.e., a vastly expanded O'Hare and no new regional airport—rather than subject the issue to comprehensive environmental analysis and public comment before making the decision.

REQUESTS FOR ACTION

Because of these concerns, we are asking the FAA and USDOT—along with whatever enforcement authority exists on this issue within CEQ and USEPA—to halt these piecemeal activities pending preparation and circulation of a Regional EIS that addresses the air transportation needs of the region for the next 20 years and examines the impacts of various alternatives to meet those needs. In addition, we are asking the Administration to take comprehensive inter-agency action to address the serious environmental, public health, and anti-trust concerns that are raised by the issues of air transportation in metropolitan Chicago—particularly as they relate to existing and proposed conditions at O'Hare and a new south suburban regional airport.

To that end we are requesting the Administration—through the FAA or whatever agency the Administration deems appropriate—to take the following actions pending the preparation of this comprehensive Regional Air Transportation EIS:

- A moratorium on any further authorizations to impose and use PFC funds or approvals of AIP funding for on-field construction projects at O'Hare until the comprehensive Regional Air Transportation EIS is complete.
- A moratorium on implementation of any Air Traffic Control Procedures such as CMAAP or changes in TRACON operations relating to O'Hare until these changes can be evaluated within the context of a comprehensive Regional Air Transportation EIS.
- A moratorium on any FAA regulatory approvals relating to physical changes at O'Hare until the comprehensive Regional Air Transportation EIS is complete.
- A moratorium on any FAA funding, regulatory or ATC decision relating to O'Hare operations until the Administration provides a convincing justification for its policy of discouraging the construction of the pro-competitive third airport.
- A moratorium on any FAA funding, regulatory or ATC decisions relating to O'Hare operations until the Administration addresses the serious toxic air pollution problem that currently exists in O'Hare residential communities due to O'Hare operations.

In addition please advise us of any requests for funding authority, regulatory approval, or other federal government regulatory action relating to O'Hare that has the potential to change the physical condition of the airport or assist in accommodating an increase in flight operations.

CONCLUSION

We have written this letter to all of you because we know you have interrelated authorities regarding these matters. The concerns we have outlined above are most serious.

Each of your agencies has responsibility to protect the environment and the public health. Of the citizens of our district in the enforcement of federal law. We ask for your help in providing that protection to our residents.

Sincerely,

HENRY HYDE
JESSE JACKSON, JR.

CONGRESS OF THE UNITED STATES,
Washington, DC, July 2, 1998.

Hon. RODNEY SLATER, *Secretary,*
Department of Transportation,
Washington, DC.

Hon. JANET RENO, *Attorney General,*
United States Department of Justice,
Washington, DC.

Hon. JANE GARVEY, *Administrator,*
Federal Aviation Administration,
Washington, DC.

Hon. CAROL M. BROWNER, *Administrator,*
U.S. Environmental Protection Agency,
Washington, DC.

Hon. KATHLEEN A. MCGINTY, *Chair,*
Council on Environmental Quality,
Washington, DC.

Federal Aviation Administration,
Chicago Airport District Office,
Des Plaines, IL.

Re: 1) Comments on Chicago's application (noticed in the June 4, 1998 Federal Register) for FAA approval of impose, impose and use, and amended authority for $823,515,000 in PFC (Passenger Facility) funds collected at O'Hare as one segment of 2.2 billion dollar O'Hare PFC authorization

1) The Administration's participation and approval of airport subsidy programs in Chicago that violate the letter and spirit of federal laws; and
2) The Administration's failure to respond to the Hyde-Jackson letter of October 1, 1997;

DEAR SECRETARY SLATER, ATTORNEY GENERAL RENO, ADMINISTRATOR GARVEY, ADMINISTRATOR BROWNER AND CHAIRPERSON MCGINTY:

On October 1, 1997, Congressman Jesse Jackson, Jr. and I sent you a letter expressing our serious concerns relating to the federal government's plans and policies toward the development and need for commercial air transportation airport facilities in the metropolitan Chicago area. As of July 1, 1998—more than 9 months since we sent our letter to you and after repeated promises by your representatives that a detailed answer to our letter was forthcoming—we still have not received the courtesy of a response.

We would have deeply appreciated the courtesy of a response and prompt corrective action by the Administration—as we requested—to address the problems outlined in our letter. Instead we are again witness to a variety of actions by the Administration that provide vivid evidence that our concerns about your refusal to take action to address these problems are real; and that some federal officials are indeed "active participants in fostering and encouraging violations of federal laws and policies relating to this problem."

Secretary Slater and representatives of the Justice Department have recently made noble pronouncements about their intended aggressiveness in addressing some (but not all) of these problems. But the actions I discuss in this letter provide ample evidence that such rhetoric is hollow, and that the actions of the federal government are intended to and will exacerbate these problems—not solve them.

I am troubled by the lack of courtesy in failing to respond to our letter and in failing to provide us the information we requested. But I am even more disturbed by the apparent continuing willingness of some of your agencies to actively promote the very abuses which we addressed in our letter and the assumption of some of your colleagues that we (and the public) can be easily misled.

To provide you perspective on my concerns, this letter is organized as follows:

Recent announcements by the FAA regarding Chicago's multi-billion dollar federally approved and federally funded airport construction program.
Additional questions and concerns developed since our October letter.
A request that the Administration deny Chicago's current request for PFC authorization (as noticed in the June 4,1998 Federal Register) and impose a moratorium on all further PFC expenditures in Chicago until the problems regarding metropolitan Chicago's airport situation have been thoroughly and comprehensively addressed and solved by your agencies.

I. The Multi-Billion Dollar Federally Approved Chicago Proposed Construction Program.

I am writing this letter in the context of a June 4, 1998 Federal register notice whereby the FAA proposes to rule on an application by the City of Chicago for federal approval to collect and/or spend $823,515,000 of federal PFC funds. This 823 million dollar request is in turn but a portion of what Chicago says is an overall 2.3 *billion* dollar PFC expenditure ($2,277,690,291)—most of it yet unexpended—authorized by the federal government for Chicago since 1993. This 2.3 billion dollar program is in turn part of an even larger program of airport related expenditures by Chicago which includes unidentified components of AIP (Airport Improvement Program) grants and airline funded General Airport Revenue Bonds (GARBs). Finally, this multi-billion dollar program extends over the next 20 years—through the year 2018

II. Observations and Questions About the Multi-Billion dollar federally funded Chicago Proposed Construction Program.

In light of the concerns raised in our October 1, 1997 letter and the discussion below, I believe the following observations and questions are in order:

A Confusing Mess Over Billions of Federal Dollars—The Need For Clear and Specific Answers.

Trying to follow the audit trail of facility components of this massive multi-billion dollar program is rendered virtually impossible by the ever changing mix of PFC, AIP, and GARB revenue sources being used. Please provide:

1) A list of all proposed facility construction or alterations for O'Hare and Midway at least through the year 2018 (the end year for which PFC authority is being requested by Chicago). Include both projects proposed by Chicago

and projects proposed by the FAA—including projects on the National Plan for Integrated Airport Systems (NPIAS). To compare "apples to apples" list any additional facilities proposed through the year 2020 to provide consistency with the State of Illinois proposal for a new metropolitan airport. Please make sure you include all the projects FAA believes should be constructed—including new runways at O'Hare. I know these runways are included in the FAA's NPIAS.

2) An itemized listing of the estimated costs of the projects listed above in item 1.
3) As to each proposed construction item list each of the funding sources (e.g. PFC, AIP, GARB, etc. and the amount from each source).
4) A list of the actual or anticipated start construction or implementation date for each item and the actual or anticipated completion date for each item.

What Capacity Increases Have Been or Will Be Produced by the Multi-Billion Dollar Federal Investment?

The primary purpose of the Aviation Safety and Capacity Expansion Act of 1990, (codified at 49 USC § 40117) was to enhance the capacity of the nation's airport system. The City of Chicago contends that this multi-billion dollar program will *not* increase the capacity of the Chicago Airport System (including Midway and O'Hare).

Yet we know that FAA has funded a Capacity Enhancement Report for O'Hare in 1991 which lists several proposed physical alterations to the airport and several operational changes which alone or in combination are intended to expand the aircraft operations capacity of O'Hare. Several of these items have been constructed or have otherwise been implemented. Others are in the list of future items proposed for O'Hare.

In light of the apparent conflict between Chicago's public posture that this multi-billion dollar program will *not* increase O'Hare's capacity as contrasted with the FAA's Capacity Enhancement Report and NPIAS (which *do increase* capacity) please provide me with the following information:

1) Please provide me with the aircraft operations capacity (by airport) of Midway and O'Hare on an hourly and annual basis: a) before the expenditure of all these billions of dollars and b) after the expenditure of these billions of dollars. Please provide these figures for O'Hare for: a) the period after the completion of the 1.5 billion dollar 1984 ODP–I which was the basis for the 1984 EIS, b) the current capacity at O'Hare, and c) the capacity at O'Hare after the new multi-billion dollar construction program listed above is completed.
2) For each of the projects for which Chicago seeks federal approval to impose, impose and use, or amend existing authority in the June 4, 1998 Federal Register (as more fully described in the April 8, 1998 submittal by Chicago) please state whether the project will either "preserve" or "enhance" capacity at O'Hare. For each project which you conclude "enhances" capacity please state how much capacity is increased. If more than one item works together with other items to provide a capacity enhancement, please identify those items and describe how these items work together.
3) If this multi-billion dollar expenditure does *not* provide significant new capacity for O'Hare or Midway, what is the public policy justification for approval of this huge expenditure? What is the policy justification for such a wasteful expenditure in light of the purpose of the 1990 Act to expand airport capacity?
4) What additional aircraft operations capacity would be provided the region if a new regional airport were to be constructed with these billions of dollars of federal funds instead of being spent at O'Hare?
5) Conversely, if this multi-billion dollar expenditure will provide significant new capacity at O'Hare and Midway, why has not the federal government prepared a comprehensive Environmental Impact Statement describing the environmental and public health impacts of the capacity expansion (including noise and toxic air pollution impacts) as well as an evaluation of alternatives to providing the same or greater capacity increases, e.g., a new regional airport? How can the FAA and DOT leadership—let alone the USEPA and the CEQ—sit idly by while a multi-billion dollar federally funded expansion program is constructed without a comprehensive EIS?

What does the multi-billion dollar federal investment do to enhance competition in the Chicago market?

Both the Department of Transportation and the Justice Department have spoken eloquently about the problems of Fortress Hubs, monopolization, and the higher fares caused by lack of competition. One of the stated purposes of the Aviation Safety and Capacity Expansion Act of 1990, (codified at 49 U.S.C. 40117) is to "provide an opportunity for enhanced competition between or among air carriers." 49 USC § 40117(d)(2)

One of the principal barriers to the entry of significant new competition in the metropolitan Chicago market has been the lack of capacity. O'Hare is a capacity constrained airport operating under the High Density Rule. Potential new airline competitors have complained that the existing lack of capacity in the Chicago market has prevented them from entering this market.

In light of statements by the Department of Transportation and the General Accounting Office that lack of competition in the Chicago air transportation market has resulted in higher monopoly based fare penalties imposed on the traveling public (especially business travelers), please answer the following questions:

1) How and to what extent does the multi-billion dollar federal investment represented by the combined Chicago PFC/AIP/GARBs program provide new capacity for new competitors to make significant entry into the Chicago market? Does the Chicago program provide major new capacity for new entrants into O'Hare? How much? If the multi-billion dollar program does or will provide new capacity at O'Hare please state in quantitative terms the hourly and annual capacity increases from the current O'Hare situation and what components of the program provide the capacity.
2) If the multi-billion dollar federal investment represented by the combined Chicago PFC/AIP/GARBs program does provide new significant capacity at O'Hare, how will that new capacity be allocated to prevent further monopoly consolidation by United and American? How many new slots will be made available and how will they be rationed so that major new competition can enter the Chicago market? How does the federal government know that the number of new slots—i.e., new capacity—provided by this multi-billion dollar investment are sufficient to provide a realistic opportunity for significant new competition to enter the Chicago market?
3) If the Chicago program does not provide significant new capacity, would the use of some or all of these funds to build a new regional airport provide more capacity and a greater opportunity for significant new competitors to enter the region?
4) If the federal PFC approval sought by Chicago was denied, what entities would pay for the construction items proposed by Chicago? As I understand it, the cost of such construction would normally be borne by the airlines who are tenants at the airport through either current charges under the lease or through GARBs. Am I correct that in the absence of federal approval of this multi-billion dollar allocation of federal tax revenues, United Airlines and American Airlines—who dominate O'Hare traffic—would have to pay the payments on the GARB bond indebtedness to pay these costs? Doesn't federal approval of the multi-billion dollar PFC/AIP components of this program represent a multi-billion dollar federal subsidy to United and American?
5) If as the Administration has stated—the conditions at Fortress O'Hare represent an oligopoly penalizing air travelers with hundreds of millions of dollars in monopoly heightened fares—does it represent sound public policy in accord with the 1990 Act and the anti-trust laws to subsidize the airlines maintaining that oligopoly with a multi-billion dollar federal subsidy? Does it represent sound public policy to enhance the monopoly position of these two oligopolist airlines by failing to use this federal money to provide significant new capacity so as to encourage new competitive entrants into the Region?
6) There can be no question that every major airport in the country—including O'Hare and Midway—has been built with significant federal subsidies intended to induce airlines to use those facilities and thus promote air traffic.

   Does it represent sound public policy to provide a multi-billion dollar federal subsidy to two of the nation's richest airlines while not providing any significant federal subsidy to new competitors by providing significant new capacity at a new airport?
7) The total 2.2 billion dollars in PFC authorization sought by Chicago—including the 823 million dollar segment sought in the June 4 Federal Register no-

tice—will exhaust all available PFC funding until the year 2018. Yet as FAA has acknowledged, with the increasing unavailability of significant AIP funds, PFC revenues have become almost the sole significant source of federal assistance for construction of new capacity. By allowing Chicago to tie up billions in PFC funds until the year 2018, the federal government is insuring a continuing monopolistic stranglehold in the Chicago metropolitan air transportation market for the next 20 years. What specifically is the federal government going to do to insure that major new capacity is built in metropolitan Chicago so that significant new competition can enter this market? Shouldn't the federal government mandate that these PFC funds be used to build major new air transport capacity in the metropolitan Chicago market?

8) The major airlines and their trade association, the Air Transport Association, have written a locally famous letter to the Governor of Illinois stating that even if a new airport is built, they will not use it. To put it in the local vernacular: Of you build it, we won't come." Does not the collective statement by the Nation's major airlines that they will not enter the Chicago metropolitan market to compete against United and American fit the classic definition of a cartel—a *de facto* agreement amongst asserted competitors to carve up geographic markets for air transportation?

9) At a recent House Judiciary Committee hearing on the issue of airline competition, I asked the Administration to explain why Delta and other major airlines are unwilling to compete in the Chicago market place; and why there appears to be an informal agreement amongst the major airlines whereby the majors appear to have carved out geographic market fiefdoms focused on their Fortress Hubs while refusing to compete in other hub markets. Isn't the bald joint declaration by the major airlines of the Air Transport Association that "If you build it we won't come."—*i.e.*, if you build new capacity in a capacity starved monopoly dominated market, we will not compete—a *prima facie* acknowledgement of anti-competitive behavior?

It is one thing for the major airlines to engage in such anti-competitive behavior. Such monopolistic behavior has been a hallmark of many industries since the days of the nineteenth century railroad barons and the Standard Oil Trust. Indeed the prevention and correction of such behavior lies at the core of our anti-trust laws.

But here we have a situation where the federal government itself (not just the airlines) appears to be a willing and major financial participant—through the PFC approval process and other federal policies—in the major airlines attempt to stifle major new capacity and major new competition in the metropolitan Chicago market. Here the government is not just failing to enforce the anti-trust laws to stop such anti-competitive behavior; it is actually providing the major financial means to strengthen United and American's monopoly and to prevent new capacity and new competition from entering the Chicago market.

Over Two Billion Federal Dollars In Chicago's Project and No Environmental Impact Statement?

How can an administration which prides itself on its environmental conscience continue to look the other way at what is becoming an open scandal in the Chicago metropolitan area? In the late 70s Chicago announced a proposal to build a massive expansion 1.5 billion dollar twenty year program at O'Hare called "ODP–I" (O'Hare Development Program-I). The proposal was accompanied by a Master Plan required under FAA AIP regulations, a full scale Environmental Impact Statement (EIS), and numerous public hearings where the full extent and environmental impact of the project was discussed and debated.

Now Chicago has underway a twenty year multi-billion dollar construction program at O'Hare—financed with more than two billion dollars of federal subsidy—and no Environmental Impact Statement has been prepared and circulated for public comment. With in excess of a two billion dollar federal expenditure on this program, we see no EIS describing the impact of Chicago's construction program or a discussion of various alternatives to the program—including and especially a new regional airport.

Here again we have some agencies of the federal government who appear to be active participants in flouting the letter and spirit of the National Environmental Policy Act (NEPA) while we see other federal agencies looking the other way. The only way FAA can say with a straight face that this two billion dollar federal expenditure will not significantly affect the environment is to claim that the project will not increase capacity and consequently air traffic at O'Hare. Yet such an admission would acknowledge the folly of this investment from the perspective of national capacity expansion goals and national policies to promote competition and discourage monopolies by promoting new competitive entry. (See discussion above)

The reality is that the FAA is actively planning capacity expansion at O'Hare. An airport's capacity is founded on three critical bases: airside capacity (runways, taxiways, etc.); landside capacity (terminals) and Road Access.

It is obvious that the billions of federal PFC dollars that are being authorized now for road and terminal expansions are designed to fit into an FAA long term program that caps this massive project with additional runways and major new capacity at O'Hare. One need only compare the 1991 FAA Capacity Enhancement Report for O'Hare, the NPIAS, and various FAA and Chicago planning documents to realize that the FAA and Chicago are engaged in a massive multi-year expansion of O'Hare—virtually all of it financed with federal PFC dollars.

If indeed, the FAA and Chicago are engaged in a program for expanding capacity at O'Hare, there will clearly be environmental, public health (e.g. toxic air pollution) safety and economic impacts on the surrounding communities and the Chicago region. None of these impacts have been disclosed, discussed with the public, or encompassed in an EIS as required by federal law. Nor has there been any EIS evaluation of the primary alternative to capacity expansion at O'Hare—a new regional airport.

How can the USEPA, CEQ and the Department of Justice—and indeed the Department of Transportation—stand idly by and allow such flagrant violation of our Nation's environmental laws. You are the officials charged with vigorous enforcement of the Nation's environmental laws and protection of the citizens for whom those laws were designed. It's one unfortunate aspect for the FAA to be a willing participant in this flagrant violation. Are you other Administration officials going to sit on your hands and let it happen?

What About Forecast Demand?

In our October 1, 1997 letter Congressman Jackson and I asked you a number of questions about forecast in air traffic demand. Despite many statements by your representatives that these questions would be answered, thus far we have not received any answers.

Since our October 1, 1997 letter several new accounts have suggested that FAA and Chicago have new forecasts that show a reduced demand for the Chicago market. But those new forecasts appear to have a series of internal contradictions that cast severe credibility on the FAA and the integrity of the airport planning process. I have several questions:

1) The 1997 ACE (Aviation Capacity Enhancement) Plan forecasts. Since our letter, the FAA has published the 1997 forecasts for O'Hare for the year 2010 for operations and enplanements. Again I ask the same questions for the 1997 ACE Plan forecasts as we did for the earlier years ACE forecasts.
2) The FAA ten year forecasts. News accounts state that FAA has recently revised its ten year forecasts for the Chicago area with the result that the NPIAS and other FAA planning activities have concluded that no new significant air traffic capacity is needed in the Chicago region. Please provide these forecasts and technical basis for these forecasts and all documents relating to that decision.
3) The news reported FAA lower forecast for the Chicago area contrasts sharply with FAA national forecasts showing very rapid and large scale growth for air traffic at a national level. Please explain the reasons why the Chicago area forecast is for little growth and the national forecast is for higher growth. Is your Chicago forecast influenced by the capacity limitations currently at O'Hare? Is your Chicago forecast influenced by the high fares charged at O'Hare? Is your forecast influenced by announced plans by United and American to shift traffic from Chicago to their hubs at Denver and Dallas? Would the Chicago area receive greater demand and growth if we had more capacity?
4) The City of Chicago has recently released a projection of air traffic growth for the year 2012 which contrasts sharply from population and regional income forecasts recently submitted to the federal government by our regional planning agency, the Northeastern Illinois Planning Commission (NIPC, of which Chicago is a part). Chicago forecasts much lower growth rates than NIPC. Yet our entire metropolitan region's 2020 Regional Transportation Plan—which included hundreds of federally funded projects costing billions of dollars—depends for much of their justification on the NIPC forecast demand. Indeed many proposed City of Chicago surface transportation projects rely on the higher NIPC growth projections which Chicago endorsed only a

few months ago. Use of the NIPC growth projections shows the need for a much greater aviation capacity increase than proposed by Chicago—which contends that no capacity increase is needed.

Does the DOT accept NIPC's growth projections (which were adopted with the concurrence of hundreds of area communities and state agencies, including Chicago) or the City of Chicago's? If DOT is now going to accept the City of Chicago's new lower growth rates and reject NIPC's, DOT is going to have to reevaluate and likely scale down all the projects in the 2020 Regional Transportation Plan—including those proposed by the City of Chicago. On the other hand, if DOT accepts the NIPC 2020 RTP forecasts, the region is going to need much more new capacity. Which forecast—NIPC's or Chicago's—do you accept?

5) The need for a 2020 forecast. All of the funding authority sought by Chicago in its PFC application extends until 2018. The Regional Transportation Plan extends till 2020. The State of Illinois airport plans are based on a year 2020 forecast. The FAA Master Planning forecast calls for a 20 year planning forecast. Congressman Jackson and I have asked you for your 2020 forecast and an explanation for any differences between your 2020 forecast and the State of Illinois. I reiterate my request for this information.

Our Unanswered Questions

Our October 1, 1997 letter asked the Administration several questions designed to provide the informational basis for candid and open discussion of these issues. In response, the Administration has chosen to ignore our questions.

I repeat our earlier requests and ask that we not wait another nine months before we receive this information. Please promptly provide the information we requested in our October 1, 1997 letter and the information requested in this letter.

The Government's Complicity In These Abuses

In our October 1, 1997 letter we noted that several of these problems were being fostered by FAA policies and actions. Rather than separately restate our position, let me quote and reaffirm our position as stated in our earlier letter:

"These [Government] development and funding activities include:

1) Affirmative FAA policies to incrementally expand the capacity of O'Hare through a variety of interrelated physical (*e.g.*, funding or approving the funding of construction projects) or non-physical (*e.g.*, changes in air traffic procedures) expansion programs; and

2) Failure of the federal government to use its regulatory and funding authority to encourage and support a much less environmentally destructive alternative to a vast O'Hare expansion—namely construction of a south suburban regional airport for metropolitan Chicago."

***

"By actively supporting the vast O'Hare expansion option through these incremental expansion actions, the federal government is becoming a major force in making the vast O'Hare expansion option—and its associated toxic air pollution impacts—a *fait accompli* while necessarily harming the potential for development of the new south suburban airport. (See discussion below.)

"None of these toxic air pollution impacts—either of an incrementally expanded O'Hare or the impacts if a far less destructive south suburban airport is built—have been the subject of either comprehensive EIS analysis or more structured regulatory analysis accompanying various expansion actions.

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"Historically, FAA's environmental scrutiny of airport development was coordinated through the FAA's Master Planning process—whereby the regional air transportation needs and alternatives for a 20 year time horizon would be discussed and evaluated in a comprehensive EIS.

"It has been obvious to us for some time that FAA has been taking federal action in either approving changes in the Airport Layout Plan or in giving approvals for either impose" or use" authority to Chicago for collection and expenditures of PFC funds. Many of these FAA actions relate to individual or group projects which—when taken as a whole—are designed to increase the capacity of O'Hare to handle further air traffic operations.

"Similarly, FAA has been taking individual air traffic control actions which—when used in conjunction with physical changes at the airport—are designed to increase the capacity of the airport to handle additional flight operations. These actions include changes in the land and hold short requirements, proposed changes in air traffic routing through CMAAP or the proposed TRACON traffic changes, and changes for increases in traffic loads during IFR conditions.

"All of these actions are being directed toward a central goal—increasing the capacity of O'Hare. Yet none of these actions have been accompanied by a comprehensive EIS examining the full scope of environmental impacts of the long term capacity increases and the alternatives to such an increase in capacity at O'Hare. Indeed many have not been accompanied by any environmental analysis at all or have been accompanied by crabbed abbreviated environmental assessments which fail to examine the cumulative impact of the overall capacity expansion.

"This failure to perform a comprehensive EIS governing the impacts and is not only a problem for communities neighboring O'Hare and the environmental impact of that expansion on these communities. This piecemealing is using FAA policy to force a physical choice—and make the choice a *fait accompli*—between two very different regional airport alternatives—a vastly expanded O'Hare vs. a new regional airport operating in tandem with O'Hare. By using a variety of FAA regulatory and financial controls in this piecemeal fashion, FAA is forcing FAA's choice on the region—*i.e.*, a vastly expanded O'Hare and no new regional airport—rather than subject the issue to comprehensive environmental analysis and public comment before making the decision."

In summary, the problems of toxic air pollution, noise, safety, lack of capacity, monopoly Fortress Hubs, high fares, etc. in the metropolitan Chicago area are being actively fostered by the policies and actions of the various Executive Branch agencies. Someone in the Administration must take aggressive action to solve these problems and stop these abuses.

Requested Action

Finally, On October 1, 1997 we asked you, the leaders of the Administration, to take action to address these problems. As we stated then:

"Because of these concerns, we are asking the FAA and USDOT—along with whatever enforcement authority exists on this issue within CEQ and USEPA—to halt these piecemeal activities pending preparation and circulation of a Regional EIS that addresses the air transportation needs of the region for the next 20 years and examines the impacts of various alternatives to meet those needs. In addition, we are asking the Administration to take comprehensive interagency action to address the serious environmental, public health, and antitrust concerns that are raised by the issues of air transportation in metropolitan Chicago—particularly as they relate to existing and proposed conditions at O'Hare and a new south suburban regional airport.

"To that end we are requesting the Administration—through the FAA or whatever agency the Administration deems appropriate—to take the following actions pending the preparation of this comprehensive Regional Air Transportation EIS:

- A moratorium on any further authorizations to impose and use PFC funds or approvals of AIP funding for on-field construction projects at O'Hare until the comprehensive Regional Air Transportation EIS is complete.
- A moratorium on implementation of any Air Traffic Control Procedures such as CMAAP or changes in TRACON operations relating to O'Hare until these changes can be evaluated within the context of a comprehensive Regional Air Transportation EIS.
- A moratorium on any FAA regulatory approvals relating to physical changes at O'Hare until the comprehensive Regional Air Transportation EIS is complete.
- A moratorium on any FAA funding, regulatory or ATC decisions relating to O'Hare operations until the Administration makes and provides justification for an anti-trust policy decision as to promoting expansion at Fortress O'Hare vs. a new south suburban airport.
- A moratorium on any FAA funding, regulatory or ATC decisions relating to O'Hare operations until the Administration addresses the serious toxic air pollution problem that currently exists in O'Hare residential communities due to O'Hare operations.

"In addition please advise us of any request for funding authority, regulatory approval, or other federal government regulatory action relating to O'Hare that has the potential to change the physical condition of the airport or assist in accommodating an increase in flight operations."

Though we have not heard any response to our request in over nine months, I reiterate this request. In particular I reiterate this request in the context of the proposed ruling noticed in the June 4, 1998 Federal Register.

I ask that the FAA and the DOT deny Chicago's current request for authorization (as noticed in the June 4, 1998 Federal register) and impose a moratorium on all further PFC expenditures in Chicago until the problems regarding metropolitan Chicago's airport situation have been thoroughly and comprehensively addressed and solved by your agencies as requested in my October 1, 1997 letter and this letter. In closing, I believe most reasonable observers would agree that Congressman Jackson and I have been patient in waiting for a response and action from you as to these problems. However, my patience is nearing exhaustion and I ask you again to enforce both the letter and the spirit of the Nation's laws regarding these problems.

Sincerely,

HENRY J. HYDE

HJH:jk
cc: Hon. Bud Shuster, Chairman
Committee on Transportation
& Infrastructure

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, August 5, 1998.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your letters concerning the federal government's plans and policies toward the development of commercial air transportation airport facilities in the metropolitan Chicago area. We apologize for the delay in responding to your original letter. Because your general inquiry was primarily directed to the Federal Aviation Administration and the Environmental Protection Agency, we had hoped to respond to you jointly with those agencies. While we have been advised that the information you requested from the FAA and EPA will be delivered to you shortly, because of the delay, we have taken the liberty to respond to your antitrust concerns in this separate letter.

The Department of Justice had the opportunity earlier this year to participate in a hearing before the House Judiciary Committee and hear your concerns and the concerns of the rest of the committee with respect to current competition issues facing the commercial airline industry. Assistant Attorney General Joel I. Klein outlined the activities currently under way at the Department of Justice to ensure competition in domestic and international airline markets. Mr. Klein's prepared statement and subsequent remarks reflect the Department's position regarding the dramatic effect that airline prices can have on consumers and communities and the critical role that federal antitrust enforcement plays in ensuring that consumers pay no more than the market price for air transport services. Deputy Assistant Attorney General John M. Nannes later appeared before the Aviation Subcommittee of the Senate Commerce, Science and Transportation Committee to reiterate these points and the Department's role in protecting consumers from the higher prices that would result if unreasonable restraints of trade go unchecked. Copies of the Department's prepared statements and other relevant materials prepared by the Antitrust Division for public disclosure are enclosed for your reference.

Antitrust enforcement efforts are under way at the Department of Justice to address the concern about possible anticompetitive practices by hub airlines. The Department is very sensitive to your interest in the progress and outcome of the investigation and will work to keep you apprised of developments as they become public. I can assure you that the Department's investigation of possible illegal conduct by hub airlines is progressing at a pace consistent with the objectives of responsible federal antitrust enforcement.

The Department of Justice appreciates your continued support for the enforcement activities of the Antitrust Division, and we deeply regret the handling of your inquiry concerning the government's plans for commercial air transport facilities in the Chicago metropolitan area.

Please do not hesitate to contact me personally if you have questions or if the Department of Justice may be of further assistance.

Sincerely,

L. ANTHONY SUTIN,
Acting Assistant Attorney General.

Enclosures

PREPARED STATEMENT OF JOHN M. NANNES, DEPUTY ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, U.S. DEPARTMENT OF JUSTICE

BEFORE THE SUBCOMMITTEE ON AVIATION, COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION, UNITED STATES SENATE
CONCERNING CONSOLIDATION IN THE AIRLINE INDUSTRY
WASHINGTON, D.C., JUNE 4, 1998

Mr. Chairman and members of the Subcommittee, I am pleased to appear before you today to discuss important antitrust issues in today's airline industry. My testimony focuses on how we analyze airline mergers and domestic and international alliances.

ANTITRUST ENFORCEMENT IN THE AIRLINE INDUSTRY

Beginning in the 1970s, our nation has in several key industries acted on the recognition that competition serves consumers far better than economic regulation. In particular, the Airline Deregulation Act of 1978 moved the domestic air transportation industry from government regulation to a new era of competition.

Antitrust enforcement is critical to ensuring that the benefits of airline competition sought by Congress are realized by consumers. The Antitrust Division has maintained an active antitrust enforcement program in the airline industry for many years. During the 1980s, the Division recommended that the Department of Transportation (which had authority over airline mergers until 1989) disapprove two mergers, TWA/Ozark and Northwest/Republic, which involved the merger of the only two hub carriers at St. Louis and Minneapolis respectively. The merging carriers were the only airlines providing nonstop service between the hub city and smaller cities in the surrounding region (such as Bismarck, North Dakota, and Cedar Rapids, Iowa).

The Division has also moved aggressively to block acquisition of gates or slots that would eliminate existing or potential hub competition, including Eastern's proposal to sell eight gates to USAir at the gate-constrained Philadelphia International Airport and Eastern's proposed sale of slots and gates at Reagan Washington National Airport to United, which operated a significant hub out of nearby Dulles airport.

The Division has also challenged transactions involving international route authority. For example, with respect to the 1991 investment agreement between British Airways and USAir, the Department brought a civil action under Clayton Act § 7 after we concluded that the transaction threatened competition in gateway city pairs and certain connecting city pairs (in particular, service between Northeast and Mid-Atlantic cities and London).

In addition to challenging transactions that adversely affect the structure of the airline industry, the Division's record demonstrates a commitment to detecting and challenging collusive practices. In 1992, we sued Airline Tariff Publishing Co. and eight major airlines, alleging that the airlines used the ATPCO electronic fare submission and dissemination system to fix prices. The consent decrees ultimately entered into banned improper signaling of future pricing intentions, which had cost consumers up to $2 billion in travel expenses.

In addition to the law enforcement efforts that I have described, the Antitrust Division engages in competition advocacy in various matters before the Department of Transportation. Because DOT retains significant authority over competitive issues raised by agreements between U.S. and foreign carriers and has the authority to grant antitrust immunity to agreements between such parties, the Division often brings our expertise to bear in comments to DOT. Overall, we have developed an excellent working relationship with the Department of Transportation.

INTERNATIONAL ALLIANCES

As you can see, the Department of Justice has been working aggressively for many years on a number of fronts to preserve competition in the airline industry since deregulation. Let me turn now to the competitive implications of international aviation marketing alliances which, for the sake of simplicity, I will refer to as "code sharing. The term "code share. can mean as little as one airline allowing another airline to use its computer reservation system codes to sell seats on its planes on routes in which the second airline cannot compete, or as much as comprehensive integration of marketing and operations that involves joint decisions on price, capacity, schedules and other competitively sensitive matters.

Absent an express grant of antitrust immunity by the Department of Transportation, the antitrust laws apply fully to international code shares. To antitrust law enforcement officials, code-sharing agreements are simply forms of corporate integration that fall somewhere between outright merger and traditional arm's length interlining agreements. Like mergers and acquisitions, code-sharing agreements have the potential to be procompetitive—they can create new service, improve existing service, lower costs and increase efficiency, all to the benefit of the traveling public. By the same token, code sharing arrangements can be anticompetitive. They can result-in market allocation, capacity limitations, higher fares, or foreclosure of rivals from markets, all to the injury of consumers. The ability to distinguish the latter from the former is crucial for aviation policy makers and antitrust enforcement authorities.

When we conduct an antitrust investigation of a code share, we always analyze the specific terms of each agreement on a case-by-case basis. In assessing the effect on competition, the first necessity is to define the relevant market and measure that market in terms of its participants and concentration. For any proposed code share, we ask whether the code-sharing partners are actual or potential horizontal competitors. From an antitrust viewpoint, the greatest threat to competition comes when two of very few airlines that compete in a market enter into a code-sharing agreement in that market. The same concerns would be planning to merge. Any time two of very few airlines in a market act jointly, we are concerned about the effect on competition.

Having defined and measured the relevant market, the next issue we examine is the potential adverse competitive effects of the code share. Here we consider whether the code-share partners will both operate flights in the market and whether their capacity, scheduling, and pricing decisions will remain independent. By independent, I mean that the agreement is structured in a way that gives each carrier the strongest possible incentive to sell seats on the flights it operates rather than on those of its code-share partner, and to cut its prices and increase its operating capacity to gain market share.

Thus, one characteristic of a code-share agreement that can reduce antitrust concerns is independent pricing and marketing of seats on the shared flights. This is often accomplished with block-seat arrangements where the non-operating carrier purchases a fixed number of seats and bears the risk of loss if those seats are not sold. This is far from ideal, however, because the cost of these seats to the non-operator, which is the key determinant of the ultimate fare to the consumer, is set by agreement between competitors. On the other hand, we recognize that compared to joint sales and marketing, a block-seat arrangement can create some additional incentive for each partner to market its seats aggressively. Finally, it is also preferable from an antitrust perspective if any block-seat agreement is non-exclusive and the time period of the agreement is not unreasonably long.

If independent operations are not contemplated, so that the code-share agreement will reduce or eliminate competition in city-pair markets between the code-share partners, we must consider the extent to which entry into these markets by new competitors is likely to occur in response to anticompetitive behavior of the code-share partners. If sufficient and timely entry can be expected, then the code-share agreement would not be likely to create or facilitate the exercise of market power by the code-share partners. In this regard, an important factor we consider is whether an "open skies bilateral exists in the market. Open skies means that new entry by a carrier is possible, although we will investigate how likely such entry would be in the event the code-share partners attempted to raise fares or reduce service. On the other hand, where entry is governed by a restrictive bilateral, the threat to competition of a code share on that city pair, particularly if the only two authorized carriers are involved, may be substantial.

And finally, if independent operations by the code-share partners in the relevant city-pair markets are not contemplated and sufficient and timely entry is not likely, we will consider evidence that one of the partners is likely to exit the market absent the code share, or that significant transaction-specific procompetitive efficiencies in serving other city pairs on a code-share basis outweigh the potential competitive harm in the overlap city pair.

In sum, we examine all of the facts and circumstances surrounding each code-share agreement and make our competitive assessment on a case-by-case basis.

How have we applied this analysis to proposed international code-share agreements that we have reviewed? The majority of proposed agreements present no horizontal competitiveconcerns. Others we have reviewed combined certain horizontal overlaps with significant end-to-end efficiencies. The Department's policy is to seek to exclude from a proposed code share those city pairs on which the proposed alliance partners are two of very few current or likely future competitors.

For agreements where antitrust immunity has been sought from the Department of Transportation, we have recommended that DOT "carve outs certain unrestricted fares involving these city pairs from the order granting antitrust immunity for the alliance agreement, provided that the carve out can reasonably be done without sacrificing important consumer benefits created by the alliance. Thus, we recommended that seven city pairs be carved out of the Delta/Swissair/Sabena/Austrian alliance (Atlanta-Zurich, Atlanta-Brussels, Cincinnati-Zurich, New York-Brussels, New York-Geneva, New York-Vienna, and New York-Zurich), one for the American/Canadian Air alliance (New York-Toronto), two for the United/Lufthansa alliance (Washington-Frankfurt and Chicago-Frankfurt), and two for the United/Air Canada alliance (Chicago-Toronto and San Francisco-Toronto).

We believe that this carve out approach permits U.S. passengers to obtain the benefits of increased efficiency and enhanced beyond-gateway service provided by these code-sharing agreements, while avoiding possible diminutions in gateway-to-gateway service or increased air fares as a result of an alliance. Of course, should a proposed code share present the potential for significant diminutions in gateway-to-gateway service while providing little likelihood for enhanced beyond-gateway service, we are fully prepared to recommend against the approval of the code-share proposal in its entirety.

I should make it clear that, although I have been discussing the way the Department of Justice evaluates international code shares, the Departments of Justice and Transportation share a common interest in protecting competition to ensure that consumers receive the best services at the lowest prices. To date, DOT has accepted all of the carve outs the Justice Department has proposed, with the exception of the four New York/Europe carve outs we sought for the Delta alliance. Even then, DOT required the alliance partners to report fare and other data that will allow us to review the effect of the alliance on price and service on these routes. If the data ultimately show that fares increase or service decreases on any of the four routes, DOT can remedy the harm by expanding the carve out accordingly.

In addition, DOT has prohibited alliance partners from participating in "fare coordination" activities under the auspices of the IATA. The Department of Justice has for years raised concerns to DOT about this type of international cartel activity, and we fully support DOT's efforts in this regard, which will clearly benefit international airline passengers.

Finally, I should note that just recently we have provided our comments to the DOT with respect to the proposed alliance between American Airlines and British Airways. In our comments, we concluded that the proposed alliance should not be approved unless it is significantly restructured. We noted that take off and landing slots should be made available in sufficient number to ensure that additional airline carriers will provide substantial new air service between the United States and London's Heathrow Airport. A bilateral open-skies treaty, while essential, by itself would not be sufficient to produce substantial public benefits that clearly outweigh the competitive harm because of constraints on service that exist at Heathrow Airport. We also recommended carve outs of two routes—between Dallas and London and Chicago and London—where American and British Airways have hubs at both ends and where entry by new airlines is highly unlikely.

DOMESTIC ALLIANCES

Alliances between major U.S. carriers, especially those that involve code sharing, are a relatively recent phenomenon. For years, there have been alliances between hub carriers and commuter carriers that serve those hubs. The first significant alliance between major U.S. carriers is the pending alliance between Continental and Northwest. We are also aware, of course, of the recently announced alliances between domestic carriers, American-US Airways and United-Delta. We are looking at all of these alliances currently. While I cannot comment on the specifics of any particular alliance, there are certain observations that can be made.

While our concern about domestic and international alliances is similar—we look to see whether there will be a lessening of competition that will harm consumers—there are likely to be some differences between domestic and international alliances that we will take into account. First, unlike some international alliances in which code-sharing may be the only way in which carriers can serve foreign markets, U.S. carriers have unlimited rights to expand their operations within the U.S. and thus are, at a minimum, potential competitors of one another. Second, unlike many international alliances in which U.S. carriers and their alliance partners do not compete broadly against one another because of laws and treaties, major U.S. carriers—even those with different regional strengths—often compete with one another in significant markets and sometimes are the only competitors in those markets, such as hub-to-hub-markets.

This is not to imply that all alliances between U.S. carriers are competitively problematic. Alliances can and do take many different shapes and forms, and the antitrust consequences of an alliance depend both upon the terms of the alliance and the carriers involved. Certain kinds of alliances may deal with matters that are not competitively troublesome. Even those alliances that involve matters that may competitively sensitive—such as code sharing—may involve carriers that do not have significant competitive overlap.

Yet, it is also true that some alliances may involve carriers that are substantial competitors, and code sharing that could be used as the means for co-ordinating service and fare offerings; such alliances start to look a lot like a merger. Thus, the Department of Justice will have to determine whether proposed code sharing alliances between U.S. carriers are likely to act as a disincentive for the alliance partners to enter markets operated by the other or to compete vigorously in markets that they both serve. In short, are such alliances likely to divide and allocate markets or produce high fares? The Department of Justice can make these kinds of assessments only after carefully reviewing the actual terms of each alliance agreement.

Alliances between major domestic carriers represent a new chapter in the history of air carrier agreements. The Department of Justice will fully investigate the competitive effects of these alliances and will challenge any one that we conclude would unreasonably restrain trade or tend substantially to lessen competition. We know that this is an area of profound interest to the Subcommittee—and to the American public—and I am here to assure you that it is to us, as well.

I hope that I have helped the Subcommittee understand the approach the Department of Justice is taking with respect to evaluating international and domestic alliances. I believe that the Division's analytical approach is sound, and that, to mix transportation metaphors, we are on the right track with respect to the manner in which we conduct our analyses in this area.

Mr. Chairman, this concludes my prepared remarks. I will be happy to answer any questions that you or other members of the Subcommittee may have.

THE SECRETARY OF TRANSPORTATION,
Washington, DC, August 14, 1998.

Hon. HENRY J. HYDE, *Chairman,*
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN HYDE: This is in response to your letter of October 1, 1997, to Attorney General Reno, Administrator Browner, Administrator Garvey, Chairwoman McGinty, and me, cosigned by Congressman Jesse Jackson, Jr. You expressed serious concerns with Federal Government policies and actions related to the development and need for commercial airport facilities in the metropolitan Chicago area. You raised numerous issues and requested information in response to many questions regarding airport development, transportation planning, aviation safety, and environmental quality.

Some of your questions have required research by several agencies to be fully responsive. I apologize for the length of time it has taken to complete this task. In responding on behalf of my fellow departmental and agency heads, this reply constitutes the consolidated efforts of each agency. We have received your related letter to me and the other addressees of your October 1 letter. We are preparing a response to the new issues raised in that letter and will provide it as soon as it is completed.

Your letter raised many complex, interrelated issues, and we have chosen to provide comprehensive answers that deal with several specific issues at one time in the interests of being clear and fully responsive.

If I can be of further assistance, please contact me or Mr. Steven Palmer, Assistant Secretary for Governmental Affairs, at 202–366–4573.

An identical letter has been sent to Congressman Jackson.

Sincerely,

RODNEY E. SLATER

Enclosure

Detailed Information

Proposed New South Suburban Airport

The State of Illinois has proposed to locate and construct a new air carrier airport for the Chicago region in Peotone, Illinois, which would be an additional airport in the Chicago region. At the State's request, the Federal Aviation Administration (FAA) has provided services that are exclusively within FAA's purview, including airspace review, technical advice, and environmental review. The Federal Highway Administration (FHWA) has participated in ground transportation studies related to the proposal, at the Illinois Department of Transportation's (DOT) request.

On March 16, 1998, the State submitted its final Environmental Assessment to the FAA. A meeting between the Illinois DOT, Secretary Kirk Brown, and the FAA was held April 27 to discuss the aviation forecasts. Discussions on the forecasts, as well as the scale, scope, and phasing of the proposed airport are ongoing. The FAA will, of course, fully comply with the National Environmental Policy Act (NEPA) and other appropriate statutes with regard to the proposed airport.

O'Hare International Airport

The FAA has received no request for funding, regulatory approval, or other Federal Government regulatory action relating to O'Hare that was directed at changing the physical condition of the airport in a way that would create new capacity for additional flight operations. O'Hare development in recent years has been focused on airport infrastructure to reduce aircraft delays and congestion for existing activity at O'Hare. For example, aircraft holding pads optimize the sequencing for aircraft departures and reduce taxiway gridlock, and high-speed exits reduce runway occupancy time. These initiatives reduce unnecessary fuel consumption (and associated jet engine exhaust) by reducing aircraft taxiing on the airport, as well as reduce flight time (and associated jet engine exhaust) and en route delay. Such improvements reduce the complexity for air traffic control and increase the efficiency of the airspace.

The FAA has reviewed the airport layout plan depicting these projects to ensure they would not adversely affect the safety or efficiency of operations, and has provided Airport Improvement Program grant assistance for some projects. Federal approvals of changes to O'Hare's airport layout plan to reflect such items as holding pads, taxiway exits, ground run-up enclosures, demolition of a cargo building, and an aircraft fire-and-rescue emergency road, are environmentally reviewed by the FAA in accordance with the National Environmental Policy Act. None of the airport development projects in recent years have resulted in a significant environmental impact.

2020 Regional Surface Transportation Plan

By way of background information, transportation planning responsibilities of state and local agencies are set forth in 23 U.S. Code, sections 134 and 135. In particular, 23 USC 134(9) requires all metropolitan planning organizations to develop a long-range transportation plan addressing at least a 20-year timeframe. The Draft 2020 Regional Transportation Plan, prepared by the Chicago metropolitan planning organization called the Chicago Area Transportation Study (CATS), is an update to the region's existing ground transportation planning document that was issued in the late 1980's.

The 2020 Plan is not a proposal to increase O'Hare operations by an additional million or more flights a year, and it is not designed to enhance the capacity of aircraft operations at O'Hare. Projects in the 2020 Plan do not include improvements to airport facilities. The plan is limited to projects that address needed improvements to surface transportation facilities and their connections to other public transportation modes, such as airports. The plan evaluates surface transportation needs based on four projected alternatives, including an examination of existing airport facilities and proposed new facilities.

As the 2020 Plan was being developed, the CATS policy board recognized that a potential new airport was in a planning phase, but that a final decision on whether it would be built was not close to being made. In order to permit the development of the 2020 Plan to continue, the CATS policy board directed staff to analyze the transportation and air quality implications of two airport scenarios - 1) a new south suburban airport and (2) no new airport. The surface transportation projects included in the plan were selected based on the stipulation that they would be necessary regardless of which airport scenario actually occurs. The assumptions included in the plan regarding population and employment would be the same for either scenario. The plan's analysis demonstrates that the recommended improvements to surface transportation facilities in both the O'Hare area and the Will

County area will be needed, regardless of whether or not a South Suburban Airport is built.

Since more than 80 percent of available transportation funds are used to maintain existing facilities, the improvements shown to be needed in both airport scenarios were most significantly influenced by existing deficiencies and overall regional growth projections. The highest priority capacity increasing projects that could be accommodated in the 2020 Plan, given financial constraints, were identical in both airport scenarios.

Regarding questions of the Federal role, the Federal Government does not take approval action regarding the 2020 Regional Transportation Plan (RTP) or the ground transportation forecasts therein. The responsibility of FHWA and the Federal Transit Administration (FTA) is to ensure that the long-range plan of transportation improvements for the Chicago metropolitan area, developed under the direction of locally elected officials acting through the Metropolitan Planning Organization (MPO), meets Federal requirements. FHWA and FTA only "accept" the Plan as meeting the requirements of 23 Code of Federal Regulations, Part 450.324, including a reflection of the area's future land use and population forecasts. This role does not include the Federal agencies taking a position on the proposal for a new airport.

The Clean Air Act requires that the MPO make a determination that the 2020 RTP conforms to the State Implementation Plan prepared by the Illinois Environmental Protection Agency (EPA), and that the emissions, taken as a whole from the RTP, will not negatively impact the region's deadline to meet the National Ambient Air Quality Standards. FHWA and FTA insure that this conformity determination has been made in accordance with the Clean Air Act and U.S. EPA conformity regulations, 40 Code of Federal Regulations, Part 93. The 2020 RTP's transportation conformity determination includes emissions from ground vehicles only; it does not take into account emissions from airport operations.

The MPO (CATS) must annually certify to FHWA and FTA that its planning process is addressing the major issues facing the area and is being conducted in accordance with applicable regulatory requirements. This planning process is reevaluated every third year, and FHWA and FTA issue a certification finding. In order to comply with the regulatory requirements regarding the planning process (including complying with the Federal Intermodal Surface Transportation Efficiency Act of 1991), the MPO is not required to examine the environmental, economic, and transportation impacts of placement of commercial air transportation facilities in the metropolitan area.

Safety

The FAA is committed to maintaining safe operations at O'Hare Airport, both now and in the future. The initiatives you mention in your letter with respect to O'Hare are all national programs to improve airport efficiency, reduce aircraft delays, and expedite frame flows. They are governed by the overarching goal of ensuring safe airport and aircraft operation.

Land and hold short operations (LAHSO) have been tested for years and are now in place on a national basis. LAHSO is an expansion of the Simultaneous Operations on Intersecting Runways (SOIR) program that has been in effect since 1968. SOIR operations have been and are available during daytime and nighttime operations. LAHSO is only available during Visual Flight Rule (IFR) weather conditions and is not to be utilized in Instrument Flight Rule (IFR) weather conditions. LAHSO has been in place at O'Hare Airport for many years.

Wet runway operations are available in accordance with the LAHSO order and existing waivers when specific airfield conditions are met. O'Hare has two such waivers in effect: Runway 14R to hold short of Runway 9R/27L, and Runway 14L to hold short of Runway 9L/27R.

Reduced separation between aircraft on final is also a national program that reduces the separation criteria by 1/2 mile when specific criteria are met. A documented runway occupancy time of 50 seconds or less is required to conduct this operation. Reduced separation requirements provide for more efficient use of the airspace and can reduce delays.

The National Transportation Safety Board (NTSB) is the official repository of accident reports. Reports of operation events that do not meet the damage and injury thresholds for an accident are considered incidents and are maintained in the FAA's Accident and Incident Data System. In addition, the FAA operates several reporting systems for specific categories of incidents. These include the Pilot Deviation (PD) System (pilot errors), the Operational Error and Deviation (QED) System (airport traffic control system errors), the Near Mid-Air Collision (NMAC) System (reports of perceived collision hazard events), the Vehicle/Pedestrian Deviation (VPD) System (unauthorized entry to active airport areas by vehicles and pedestrians), and the

Runway Incursion (RI) system (a derivative system containing reports of incidents reported through the aforementioned systems, except NMAC's, which meet the definition of a runway incursion).

The chart below lists by year for the period 1990 through 1996 the number of each category of accident or incident that occurred within a 5-mile radius of O'Hare. Reports of accidents, incidents, and near mid-air collisions can also be accessed via the FAA's Internet Website @ *http://www.faa.gov*.

	1990	1991	1992	1993	1994	1995	1996
PO's	4	4	5	13	9	7	4
OEO's	4	10	9	6	9	7	5
NMAC's	0	0	2	0	1	0	1
NTSB (Accidents)	1	3	1	2	2	0	0
AIO's (Incidents)	20	11	16	7	11	24	7
VPD's	1	1	4	1	1	4	0
RI's	2	3	3	2	5	7	2

FAA's standard procedures for handling operational errors are set forth in FAA Order 7210.3, Facility Operation and Administration, Chapter 5, Reporting and Handling Incidents. The FAA would conduct periodic on-site facility operational error reviews of any investigative proceedings at an airport, would monitor program administration, and would establish a follow-up mechanism to determine if corrective actions contained in a Final Operational Error/Deviation Reports are accomplished.

Competition

Competition is as crucial in the airline industry as it is in other industries, and this Administration will not condone antitrust law violations. The Antitrust Division of the Department of Justice (DOJ) has been and continues to be vigilant with respect to anti-competitive behavior in the airline industry. If, after any investigation, the DOJ concludes that an antitrust violation exists, the DOJ will enforce the antitrust laws.

Currently, the Antitrust Division has an ongoing investigation into hub carrier pricing practices in the airline industry. With respect to so-called "lockstep pricing," such pricing is quite common in the airline industry, as it is in other industries where competitors post prices publicly in order to sell their products. As is the case, for example, with neighborhood gas stations, competitors within a given area frequently feel it necessary to match each other's prices. In and of itself, such price matching does not demonstrate illegal behavior or a noncompetitive marketplace. Indeed, such behavior can occur precisely because there is vigorous competition. The price matching becomes illegal when it is a signaling mechanism for, or the product of, agreement among the competitors on what prices to charge.

The Antitrust Division has closely monitored airline pricing practices over the past several years and will continue to respond vigorously where those practices are in violation of the antitrust laws. The Antitrust Division already has brought a case against all the major airlines for their pricing practices, and obtained a court decree outlawing a number of pricing practices that promoted illegal behavior (*United States* v. *Airline Tariff Publishing Co.*, D.D.C., December 21, 1992). The DOJ stands ready to enforce that decree or institute a new case if the circumstances warrant such action.

The Department of Transportation (DOT), for its part, has recently taken a major step to ensure competition in the air transportation industry. On April 6, 1998, the DOT announced its proposed Enforcement Policy Regarding Unfair Exclusionary Conduct in the Air Transportation Industry. This announcement was followed by the publication of a *Federal Register* Notice (63 FR 17919, April 10, 1998) requesting comments on the proposed statement. The proposed policy was developed by the DOT in consultation with the DOJ and sets forth tentative findings and guidelines for use by the DOT in evaluating whether major air carriers' competitive responses to new entry warrant enforcement action under 49 U.S.C. 41712, the DOT's statutory mandate to prohibit unfair methods of competition.

The DOT is also taking steps to introduce more competition at slot-controlled airports by making use of slot exemption authority granted by the Congress. During fiscal year 1998, the DOT has granted 55 slot exemptions at O'Hare Airport to 5 new entrant carriers and 30 slot exemptions at New York LaGuardia Airport to 5 new entrants. Other recently filed exemption applications are under review. It is important to note, however, that the DOT has stated that the grant of exemptions will be limited and the High Density Airport Rule will not be undermined through the exemption process. Any major change in the limits on operations at O'Hare can only take place through a public rulemaking process.

Air Quality

Air pollution associated with an airport comes from many sources. The primary sources include aircraft emissions during takeoff and landing, aircraft emissions while idling and taxiing on the ground, emissions from automobiles and other traffic going to and from the airport, and emissions from service vehicles at the airport. All of these sources are generally categorized as mobile source or area source emissions, as opposed to what is categorized as point or industrial emission sources. The Environmental Protection Agency (EPA) is concerned about toxic air pollution from all sources, including mobile and area sources, and is working to quantify and address this pollution.

EPA's mobile source control programs, such as setting emission standards for aircraft and vehicles along with associated fuel requirements, provide for control and reduction of toxic emissions associated with airport operations. Currently, there are standards for vented fuel, smoke, and exhaust emissions for subsonic commercial jet aircraft. EPA, in consultation with FAA, also issued a rulemaking that adopted the existing commercial jet engine emission standards of the United Nations International Civil Aviation Organization. In addition to aircraft emission reduction measures, EPA has also taken regulatory actions that will reduce emissions at airports produced by ground access vehicles and ground support equipment (such as baggage carts and belt loaders). EPA regulatory actions on ground vehicles include new emissions standards for heavy-duty engines including buses and proposed new emissions standards for nonroad diesel engines. Furthermore, EPA anticipates proposing new emission standards for nonroad spark-ignition engines.

The EPA would not characterize O'Hare airport as tone of the largest sources of toxic air pollution in the State of Illinois." The EPA believes that air toxic concentrations in the communities around O'Hare airport are similar to the concentrations in other parts of Chicago and other urban areas. In 1990, the EPA conducted a screening level study that estimated the risk from air pollution in five cities, including Chicago. The study contained various uncertainties and assumptions and only included a subset of toxic pollutants. However, the results provide rough estimates of the combined health risks due to all sources of air taxies in urban areas. This study predicted that cancer risk was generally about 1 in 10,000, but varied from 1 in 100,000 to 1 in 1,000. The EPA believes these risks to be typical of other urban areas.

In addition, some specific studies have been conducted in Chicago. The southeast and southwest sides of Chicago were studied for cancer risk from air pollution. In these areas, risks were attributed to a variety of source types, including industrial sources, such as steel mills and chrome electroplaters, automobiles, and gasoline marketing. The southwest Chicago air taxies study explicitly included estimated impacts from Midway Airport. The findings of this study are summarized in the attached executive summary and pie charts (Attachment A). In southwest Chicago, mobile sources (including road vehicles, nonroad engines, and aircraft engines) were estimated to contribute about 25 percent of the air toxic emissions. Gasoline marketing (primarily from gas stations) contributed about 36 percent; steel mills contributed about 14 percent; and solvent uses such as paint strippers, surface coating, degreasing and dry cleaners contributed about 16 percent. The risks of cancer from air taxies in southwest Chicago were estimated at approximately 2 in 10,000. This risk estimate, which falls within the range cited above, is consistent with studies of other urban areas.

EPA has not conducted an air taxies study to estimate risk in the vicinity of O'Hare airport. The neighboring communities are primarily residential with no nearby steel mills and few nearby chrome electroplaters, thus reducing exposure to industrial emissions of toxic air pollution. Roadway vehicle emissions are presumably comparable to those in southwest and southeast Chicago. Therefore, although the number of aircraft landing and taking off at O'Hare is significantly higher than Midway, the overall risk in this area is expected to be no higher than that in southwest or southeast Chicago.

The FAA has evaluated air toxics at Seattle-Tacoma International Airport (Sea-Tac) at the special request of local citizens groups. These studies indicated that automobile exhaust emissions appeared to be the primary source of air toxics within the region. (Sea-Tac Airport Master Plan Update Final EIS) These conclusions seem to be consistent with the 1993 EPA Southwest Chicago study which included Midway Airport. We are not aware of any other Federal studies which have evaluated air toxics around airports.

Air toxics monitoring has been focused primarily on urban areas around heavy industry centers. There has been no air toxics monitoring in residential suburban communities in the vicinity of O'Hare. However, the EPA's Great Lakes Air Toxics Emissions Inventory project will be estimating aircraft emissions as part of the mobile source inventory expansion project currently underway. Plans are being developed under the EPA's Great Waters Program to perform toxics modeling throughout the Great Lakes area, so that concentrations of toxics in various geographic areas could be estimated.

The Clean Air Act Amendments require EPA to develop an urban strategy that will reduce air toxic emissions from sources in order to address the associated health risk posed by the most highly toxic pollutants. As part of this strategy, EPA will add air monitoring sites in selected urban areas to improve the understanding of air toxics and will update the model of ambient air toxics concentrations nationwide to reflect 1996 data. In addition, EPA is required to study the need and feasibility of controlling emissions of toxic pollutants from motor vehicles and fuels. EPA is developing an integrated approach that addresses the urban air toxic emissions from major stationary sources, area sources, and mobile sources. EPA is currently analyzing data to determine which air toxics sources will be included in the urban air toxics program, which is expected to be completed by June 1999.

The Clean Air Act directs the EPA to set Federal emission limits that apply to specific sources of pollution. EPA's air toxics control measures under the 1990 Clean Air Act Amendments have focused predominantly on reducing emissions of hazardous air pollutants (HAP), also known as air toxics, by setting technology-based standards, which target stationary (industrial) sources. These standards issued by EPA over the past 6 years have proven extremely successful. Once fully implemented, these standards will cut emissions of toxic air pollutants by nearly one million tons per year.

Additional air toxics reductions are also expected to continue as a result of other control programs that indirectly reduce air toxics, such as implementation of the ozone and particulate matter National Ambient Air Quality Standards (NEARS). For instance, reductions in ozone concentrations are achieved in part by reducing emissions of volatile organic compounds (VOC). Many of the components of VOC are listed as HAP under section 112 of the Clean Air Act. In the Chicago area, VOC's have been reduced from 1,216 tons per day in 1990 to 801 tons per day in 1996. Therefore, as reductions in ozone are achieved, benefits of reduced exposure to VOC HAP have occurred. Most of the cancer benefits from reductions of VOC HAP emissions are associated with benzene, 1,3-butadiene, and formaldehyde, which were referenced in your letter. Data on non-cancer human health benefits resulting from reduced emissions of air toxics are not available.

Airports are by no means being overlooked or unmitigated as important sources of air emissions. When an airport owner proposes significant airport expansion involving Federal approval or funding, the FAA is responsible for evaluating the impact on national air quality standards. The FHWA and FTA have a similar responsibility for significant highway and transit projects involving FHWA or FTA approval or funding. Since Chicago is in nonattainment of EPA's air quality standard for ozone, these agencies would be required to determine that the ozone precursor emissions caused by the project would conform with the purposes of the Illinois EPA State Implementation Plan. If de minimis levels are exceeded, the FAA must complete an air quality analysis for a determination of conformity, which is subject to public review and comment. Also, FHWA and FTA must complete an air quality conformity analysis and determination for regional ozone precursor emissions from the highway/transit network. The EPA has authority under the Clean Air Act to review and comment on the conformity analysis and determination.

In addition, the EPA encourages use of innovative technologies and creative approaches to reduce air emissions at airports, whether applied to existing facilities, expansion or modification projects, or new construction. Effective control measures are currently available, particularly to reduce mobile source emissions associated with airport operations. The EPA is both willing and anxious to continue working with other Federal agencies, state agencies, and other stakeholders to address these environmental concerns completely and comprehensively.

Noise

Aircraft noise has generally been decreasing at commercial airports in the United States during the 1990's because of the phase out of the noisier Stage 2 aircraft. The City of Chicago submitted a noise exposure map to the FAA in 1989 for O'Hare International Airport, and updated that map in 1993 pursuant to Federal Aviation

Regulations Part 150. The 1993 noise contours are smaller than the 1989 contours and are expected to decrease in the latter 1990's. Nevertheless, the city of Chicago is committed to noise mitigation of schools and residences. Since 1990, the FAA has issued nearly $61 million in Airport Improvement Program grant funds for noise mitigation, and the city has pledged over $234 million in passenger facility charge (PFC) funds for noise mitigation.

Aviation Forecasts

The following table presents both the 1995 and 1997 final Terminal Area Forecast (TAP) projections for Chicago O'Hare and Midway airports for fiscal years 2000 and 2010. The FAA's Airport Capacity Plan uses the TAF in its analysis; however, it should be noted that the 1995 Airport Capacity Plan used a preliminary forecast.

Fiscal Years 1995 and 1997 Terminal Area Forecast for Chicago O'Hare and Midway, Projections to 2000 and 2010

	Enplanements (000)			Operations		
	1995	1997	Percent Change	1995	1997	Percent Change
O'Hare						
Projection to 2000	36,803	35,782	−2.8%	925	939	1.5%
Projeclion to 2010	48,069	46,317	−3.6%	1,007	1,081	7.3%
Midway						
Projeclion to 2000	5,980	4,981	−16.7%	287	273	−4.9%
Projection to 2010	9,524	6,961	−26.9%	304	310	2.0%
Total						
Projection to 2000	42,783	40,763	−4.7%	1,212	1,212	0.0%
Projection to 2010	57,593	53,278	−7.5%	1,310	1,391	6.2%

The 1997 projections reflect FAA's improved method of forecasting large hub airports. The enhanced model incorporates greater consideration of local economic conditions within the hub's metropolitan statistical area and potential seating capacity of those airlines serving the hub. The new method also uses separate forecast procedures for connecting and originating traffic. These approaches should significantly increase the accuracy of current and future forecasts.

For the Chicago region, the 1997 methodology resulted in a relatively modest change in the FAA's forecast of total passenger demand at the two Chicago airports combined. The change in projected demand at the two airports reduced the projected level of enplaned passengers in 2010 by about 7.5 percent. However, the change in the enplanements forecast was significantly larger at Midway. The downward revision in the 1997 Midway forecast adjusted for overly optimistic assumptions in the 1995 forecast about the expected impact of enhanced service by Southwest Airlines.

The 1997 forecast also showed a 6.2-percent increase in the level of aircraft operations projected for 2010 compared to the 1995 forecast. This change in the operations projection was due to the assumption of a smaller average aircraft size, which is turn assumes a smaller number of passengers per flight. With a smaller aircraft size, it takes more operations to move the same number of passengers. The average aircraft size increased in the late 1980's and early 1990's, and the 1995 forecast anticipated a continuation of this trend. However, average aircraft size stopped growing in the mid 1990's. While this is not expected to be a permanent condition, the 1997 forecast did assume a smaller aircraft size than the previous year's forecast.

It should be noted that the aviation forecasts used by the MPO in the 2020 Regional Surface Transportation Plan were not provided by the FAA nor examined by the FAA prior to their inclusion in the plan.

The FAA believes that the enplanements forecast used by the State of Illinois in the South Suburban Airport (SSA) study is too optimistic and probably overstates the demand for aviation activity in the Chicago region. Between 1996 and 2020, the FAA's Terminal Area Forecast projects total enplanements in the Chicago region (O'Hare and Midway Airports) to increase from 36.7 million to 65.3 million-an average annual increase of 2.4 percent. The SSA study projects 82.3 million enplanements in 2020-an average annual increase of 3.6 percent. This is over 26 percent higher than the TAF, with the major difference occurring in two areas-the expected growth in connecting and international enplanements.

- *Originating Traffic* The TAF projects originating enplanements (including international enplanements) to total 44.0 million in 2020, an average annual increase of 3.0 percent annually—19 percent lower than the comparable SSA projection. If, however, international traffic is excluded, domestic originations in the two forecasts differ by only 5.9 percent in 2020.
- *Connecting Traffic* The SSA forecast of 31.4 million connecting enplanements for the Chicago Region is almost 47 percent higher than the TAF for the region in 2020. The SSA forecast projects connections to increase 2.8 percent annually between 1996 and 2020. The TAF annual growth rate for the same period is 1.4 percent. The lower growth rate in the TAF is consistent with the recent historical growth trend in connecting traffic at O'Hare. Connections at O'Hare have been declining as a percentage of total domestic enplanements since 1988, and have changed little in absolute numbers since 1990. The FAA's assessment of expected future commercial activity at O'Hare is that this trend will most likely continue. The SSA study did not provide justification for a major structural shift in connecting activity at the airport.
- *International Enplanements* The SSA forecast of 18.4 million for international enplanements is almost 86 percent higher than the TAF in 2020. The TAF projection of 9.9 million represents a growth rate for international enplanements of 5.1 percent annually between 1996 to 2020, slightly above the national average growth rate for total international traffic to and from the United States. The SSA study projects international enplanements at O'Hare to increase at an average annual rate of 7.8 percent over the 24-year forecast period. Although the historical trend in international enplanements at O'Hare since 1991 shows an annual growth rate of 7.8 percent, it is highly unlikely that any airport can sustain this rapid rate of growth over an extended period. The O'Hare experience reflects both the result of more efficient operations at O'Hare and the increase in international gateways in the United States associated with international open skies agreements. At some point, international access stimuli will subside in importance, and Chicago's international growth will more closely resemble the national average.

The tables below present FAA forecasts of enplanements and aircraft operations at O'Hare and Midway airports up to the year 2020. It should be noted that a single aircraft landing and later taking off from O'Hare is counted as two operations. One operation is the landing and another operation is the takeoff. Therefore, to count what is commonly understood to be the number of "flights" using an airport, one must divide the number of operations by two. If the SSA study's forecast of 73 million enplanements in 2020 were substituted for the FAA's forecast for O'Hare in the table below, the resulting number of aircraft operations (using FAA's estimate of an average of 95 passengers per commercial flight at O'Hare) would be 1.54 million.

Chicago O'Hare Forecast 1996–2020

	Enplanements			Operations						
Year	Air Carrier	Commuter	Total	Air Carrier	Air Taxi	Commercial	General Aviation	Military	Local	Total
1996	30,239,534	1,934,960	32,174,494	751,067	119,735	870,802	35,526	2,858	0	909,186
2000	33,513,982	2,268,134	35,782,116	775,719	126,580	902,299	36,959	0	0	939,258
2005	38,040,941	3,008,712	41,049,653	832,239	143,781	976,020	34,320	0	0	1,010,340
2010	42,567,901	3,749,291	46,317,192	888,760	160,983	1,049,743	31,681	0	0	1,081,424
2015	46,998,402	4,452,982	51,451,384	948,051	181,251	1,129,302	29,286	0	0	1,158,588
2020	51,636,169	5,263,245	56,899,414	1,006,316	194,299	1,200,614	27,072	0	0	1,227,686

Chicago Midway Forecast 1996–2020

	Enplanements			Operations						
Year	Air Carrier	Commuter	Total	Air Carrier	Air Taxi	Commercial	General Aviation	Military	Local	Total
1996	4,401,777	74,984	4,476,761	126,057	48,431	174,488	76,984	2,336	543	254,351
2000	4,890,280	90,309	4,980,589	134,379	50,488	184,867	85,397	1,725	799	272,788
2005	5,855,042	115,851	5,970,893	153,906	53,895	207,801	81,262	1,725	799	291,587
2010	6,819,804	141,393	6,961,197	173,433	57,302	230,735	77,127	1,725	739	310,386
2015	7,529,615	172,855	7,702,470	189,614	61,125	250,739	73,347	1,725	739	326,549
2020	8,191,766	208,290	8,400,056	204,268	65,202	269,471	69,752	1,725	683	341,631

- *Airport Development* The FAA maintains the National Plan of Integrated Airport Systems (NPIAS), which identifies future needed airport development that is eligible for Federal aid, intended by its sponsors to be undertaken within the NPIAS planning period, and occurs at airports considered significant to national air transportation. The NPIAS does not commit individual entities that own and operate airports to planning or constructing projects in accordance with the NPIAS. New runways 9-27 and 14-32 and relocation of two existing runways at O'Hare were included in the NPIAS in 1991 as a result of the "Chicago Delay Task Force. recommendation that these airfield improvements would reduce delays in Chicago, particularly during IFR conditions. These projects remain in the NPIAS in the year 2006 and 2007 timeframes.

  However, planning and constructing new runways and other airport facilities is the role of an airport owner, not the Federal Government. The determination of specific facility requirements at an airport involves a detailed analysis of alternatives and is accomplished through an airport master planning process by the airport owner that matches airside capacity against aircraft demand forecasts and examines whether and how any expanded facilities can be accommodated. The FAA is not aware of any master planning studies by the city of Chicago analyzing the effects of 2010, 2020, or other activity forecasts on physical facilities at O'Hare.

  The subject of any runway development at O'Hare has been extremely controversial for years. The city of Chicago previously advised the FAA that it was inappropriate to show near-term specific capacity/expansion projects on any FAA plans relating to O'Hare since the city had removed potential new runways from its agenda. Accordingly, such projects were removed from the 1995 FAA Airport Capacity Enhancement Plan. The FAA does not have any plan on file from the city of Chicago identifying airport expansion, -nor is the FAA cognizant of any plans. A recent court decision in Illinois requires the city of Chicago to release plans for O'Hare. The city announced in late October 1997 that it would appeal this decision.

Information on Airport Delays

Attached is an eight-page delay report assembled from the Air Traffic Operations Network (OPSNET) (Attachment B). The OPSNET is the FAA's delay tracking system. The attached report covers the five largest airports in terms of operations. The data includes frame counts, causes of delays, and the percent of delays as it relates to total operations.

Standardized Delay Reporting System (SDRS) data was collected from 1978 to 1988 and included only delay information from American, Eastern, and United Airlines. This data had limited value and is no longer available in any format because SDRS was discontinued after the bankruptcy and demise of Eastern Airlines.

Airline Service Quality Performance (ASQP) data is available monthly from 1988 forward. The ASQP data reflects information provided from the top 10 carriers on actual flight segment times (gate out, wheels off, wheels on, and gate in). The sheer volume of the data makes it impractical to forward the monthly reports as part of this response. The DOT Bureau of Transportation Statistics' Office of Airline Information, (202) 366-2483, would be happy to provide particular statistical information you require from any of the reports.

The DOT completed a very comprehensive study, *Report to Congress: A Study of the High Density Rule, May 1995*, of the high density rule in 1995 which examined all the high density airports, including O'Hare. The study provided detailed analysis about the effects of various levels of increased operations, including elimination of the rule. Regardless of any level of increased operations, the DOT study indicates that increased operations at O'Hare can be accommodated with resulting positive and negative effects. On the positive side, consumers would benefit from new and expanded air service and reductions in airfares, while on the negative side, there would be an increase in delays. It should be noted that any large-scale changes to the high density rule would only be made through a public rulemaking process.

The study clearly stated that any changes in the number of aircraft operations would not affect air safety. The sophisticated traffic management system that is in effect today limits demand to operationally safe levels through a variety of air traffic control programs and procedures that are implemented independently of the limits imposed by the high density rule. The FAA's Air Traffic Control will continue to apply these programs and procedures for ensuring safety regardless of an increase in the number of operations that could result from changes to the high density rule or slot exemptions.

The Chicago Metroplex Airspace Analysis Project (CMAAP) was tasked with analyzing alternatives which would enhance traffic flows and meet future demands. The CMAAP effort came to a close late summer 1997. The Chicago Terminal Airspace Project (CTAP) is much narrower in focus and seeks to balance the Federal airspace delivery system with existing surface acceptance rates for airports in and around the Chicago airspace. CTAP is looking for ways to enhance the efficiency of the airspace around the Chicago and Milwaukee metropolitan areas. Any proposed changes in air frame routes will be designed to improve en route spacing into and out of the airspace.

The FAA does not have the requested information regarding throughput measurements. Hourly/daily throughput is not a metric calculated as part of an airspace capacity analysis. The primary objective of CTAP is to identify improved methods of sequencing traffic inbound and outbound utilizing the recently commissioned Terminal Radar Approach Control (TRACON) facility in Elgin, Illinois.

The FAA is undertaking an environmental impact statement (EIS) for air traffic control procedures, routes, and airspace modifications proposed by CTAP. The CTAP proposal focuses on airspace located approximately 40 to 60 miles from O'Hare and is not related to the physical alterations proposed in the 1991 Chicago Delay Task Force Report.

Response to Requests for Action

The issues connected with each of these recommendations, including any associated Federal actions, have been addressed in pertinent sections of this detailed response.

ATTACHMENT A

EXECUTIVE SUMMARY

This report estimates the cancer risks associated with 30 air pollutants in the Southwest Chicago area. The study area, approximately 16 square miles including Midway Airport and neighboring suburbs, is bordered on the north by Pershing Road, on the south by 70th Street, Harlem Avenue on the west, and Pulaski Avenue on the east. About 93,854 people live in the study area.

Significant uncertainties are associated with estimating risk. These are due to data limitations and assumptions inherent in our current risk assessment methodology. The numerical estimates presented in this report should be viewed only as rough indications of the potential for cancer risk caused by a limited group of pollutants found in the ambient air. A detailed discussion of uncertainties inherent in this study is contained in Chapter V.

The study's purpose is to estimate cancer risks that may be attributed to toxicants in the ambient air in Southwest Chicago. U.S. EPA estimated risks for 30 air pollutants, including 7 known human carcinogens, 21 probable human carcinogens and 2 possible human carcinogens.

According to statistics from the American Cancer Society, about one in three Americans will contract cancer over the course of an average lifetime. Of the approximately 31,000 cancer cases that can reasonably be projected for this population, the report finds that 20 (or about one case every three and a half years) may be caused by the air pollutants studied. There are known and suspected risk factors that can increase the likelihood of contracting the disease (including both voluntary and involuntary exposures to carcinogens).

This cancer risk from toxic air pollution is of the magnitude of 2 chances in 10,000. This is consistent with other urban area studies that have estimated cancer risks from air pollution. These other studies reported risks ranging from a low of 1 in 10,000 to a high of 10 in 10,000.

Cars, trucks, buses, and trains are the major contributors of carcinogens accounting for about 25% of the total estimated cancer cases. Background concentrations of formaldehyde and carbon tetrachloride account for 19%. The third major contributor in the area is chrome plating operations accounting for about 16% of the total estimated cancer cases. Other significant contributors are aircraft engine emissions from Midway Airport and nonroad mobile sources (such as lawn mowers and snowblowers). Each of these two sources contributes approximately 11% of the total estimated cancer cases. These combined sources account for 81% of the estimated air-pollution-related cancer risks in the area.

Based on U.S. EPA unit risks used in this study, 1,3-butadiene is the most significant pollutant that contributes to cancer risk in the area. The second highest pollutant contributor is polycyclic organic compounds (POM). Both these two pollutant contributors are emitted mostly from mobile sources such as automobile, aircraft, and nonroad equipment engines. Other major pollutant contributors are hexavalent chromium (commonly used in the chrome-plating process) and formaldehyde (generated mostly by photochemical reactions).

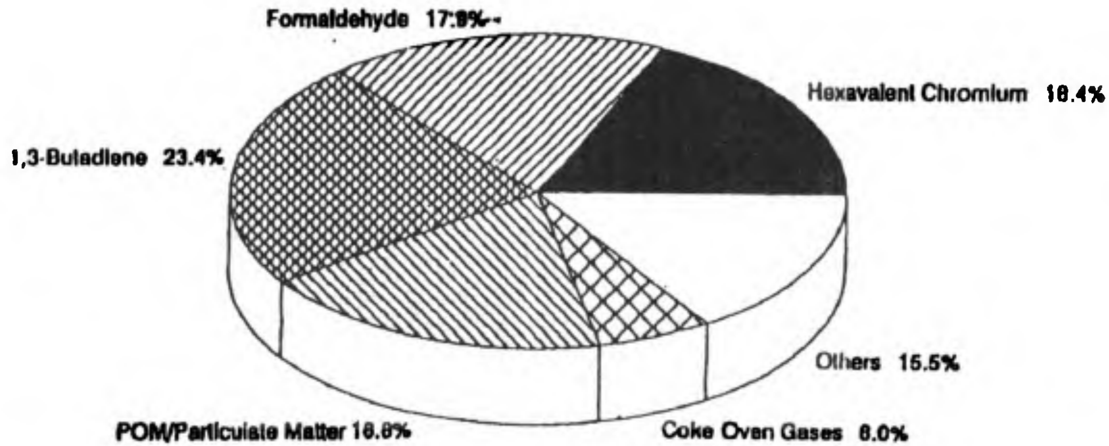
CONCLUSION

The cancer risks from air pollutants estimated in this study are consistent with the risks found in other large urban areas. The study's findings parallel similar studies in other major urban areas of the United States and are typical of highly industrialized communities.

U.S. EPA recognizes the air quality in urban areas must be improved and is taking steps to address the air pollutants that adversely affect human health. The 1990 amendments to the Clean Air Act specifically address many of the sources of air pollution common to urban areas. Generally speaking, the Chicago metropolitan area as a whole should experience a dramatic and visible improvement in air quality as many specific provisions of the new Federal law are implemented.

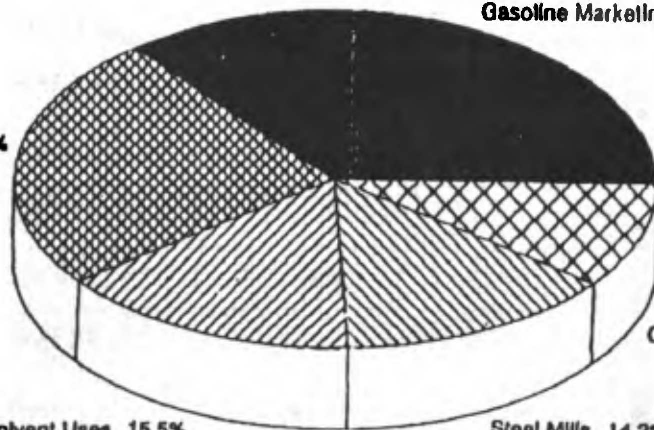
U.S. EPA's actions include stricter regulation and enforcement of emissions of air toxicants including many of those studied in this report. Transportation control measures, use of cleaner fuels, vapor recovery at gas stations, and stricter controls on consumer solvents are only a few of the changes that will soon affect every person in the metropolitan area.

SOUTHWEST CHICAGO STUDY
CONTRIBUTIONS TO CANCER RISK
BY POLLUTANT



TOTAL NUMBER OF CASES = 20.1

SOUTHWEST CHICAGO STUDY
TOXIC EMISSIONS BY SOURCE CATEGORY



TOTAL EMISSIONS = 26,832 Tons/Yr.

- Emissions are Apportioned on a Mass Basis
- Mobile Sources Include Road Vehicles, Nonroad Engines, and Aircraft Engines
- Solvent Uses Include Paint Strippers, Surface Coating, Degreasing, and Dry Cleaners
- Gasoline Marketing Toxic Emissions are Comprised Mostly of Gas Vapors

ATTACHMENT B

Air Traffic Operations Network - OPSNET
Total Traffic and Delays by Cause
for Select Airports

Facility	YYYYMM	Traffic	Delays	Equipment	% of ops	Weather	% of ops	Volume	% of ops	Runway	% of ops	Other	% of ops
ATL	92/01	50025	785	[illegible]	0.0020%	580	1.1583%	200	0.3994%	[illegible]	0.0080%	0	0.0000%
ATL	92/02	46947	649	[illegible]	0.0021%	427	0.9095%	183	0.3898%	0	0.0000%	38	0.0809%
ATL	92/03	5107[illegible]	1002	0	0.0000%	661	1.2941%	274	0.5365%	16	0.0255%	54	0.1057%
ATL	92/04	4978[illegible]	878	1	0.0020%	557	1.1188%	317	0.6367%	0	0.0000%	5	0.0060%
ATL	92/05	50528	793	0	0.0000%	557	1.1024%	220	0.4354%	9	0.0178%	7	0.0139%
ATL	92/06	51719	2080	15	0.0290%	1951	3.7723%	88	0.1702%	[illegible]	0.0077%	22	0.0425%
ATL	92/07	52791	2748	0	0.0000%	2621	4.9649%	120	0.2273%	0	0.0000%	7	0.0133%
ATL	92/08	53083	2013	30	0.0565%	1784	3.3608%	163	0.3071%	29	0.0546%	7	0.0132%
ATL	92/09	51748	1841	[illegible]	0.0019%	1603	3.0977%	212	0.4097%	21	0.0213%	14	0.0271%
ATL	92/10	54707	1123	[illegible]	0.0018%	799	1.4605%	309	0.5648%	1	0.0018%	13	0.0238%
ATL	92/11	51630	2182	0	0.0000%	1721	3.3333%	435	0.8425%	21	0.0407%	5	0.0097%
ATL	92/12	53701	2379	0	0.0000%	1844	3.4338%	309	0.94[illegible]%	16	0.0298%	13	0.0242%
ATL	93/01	53518	2494	[illegible]	0.0093%	1576	2.9448%	639	1.1940%	129	0.24[illegible]%	145	0.270[illegible]%
ATL	93/02	4977[illegible]	1668	0	0.0000%	909	1.6281%	755	1.5167%	[illegible]	0.0040%	5	0.0040%
ATL	93/03	53573	1629	[illegible]	0.0037%	949	1.7714%	678	1.2616%	0	0.0000%	5	0.0037%
ATL	93/04	54936	982	0	0.0000%	533	0.97[illegible]%	382	0.722[illegible]%	51	0.0928%	1	0.0018%
ATL	93/05	55633	1304	79	0.142[illegible]%	813	1.4614%	382	0.6866%	28	0.0503%	5	0.0036%
ATL	93/06	55918	1536	0	0.0000%	1096	1.9600%	376	0.6724%	59	0.1055%	5	0.0089%
ATL	93/07	57[illegible]	1036	10	0.0174%	884	1.5340%	143	0.248[illegible]%	0	0.0000%	5	0.0017%
ATL	93/08	59750	1724	40	0.0669%	1307	2.1874%	337	0.5640%	40	0.0669%	9	0.0000%
ATL	93/09	57554	950	0	0.0000%	612	1.0633%	232	0.4031%	48	0.0834%	64	0.1112%
ATL	93/10	58707	1054	0	0.0000%	833	1.4189%	204	0.3475%	11	0.0187%	6	0.0102%
ATL	93/11	56062	457	0	0.0000%	305	0.5440%	106	0.1891%	46	0.0821%	0	0.0000%
ATL	93/12	58931	801	0	0.0000%	681	1.1556%	111	0.1884%	0	0.0000%	9	0.0153%
ATL	94/01	58488	1028	25	0.0427%	767	1:3114%	196	0.3351%	34	0.0581%	6	0.0103%
ATL	94/02	53570	678	0	0.0000%	519	0.9688%	151	0.2819%	7	0.0131%	1	0.0019%
ATL	94/03	61144	1018	0	0.0000%	732	1.1972%	272	0.4449%	9	0.0147%	5	0.0082%
ATL	94/04	59429	1096	2	0.0034%	855	1.4387%	228	0.3837%	8	0.0135%	3	0.0050%
ATL	94/05	59482	843	0	0.0000%	626	1.0524%	214	0.3598%	1	0.0017%	2	0.0034%
ATL	94/06	58991	1847	0	0.0000%	1584	2.6852%	199	0.3373%	59	0.1000%	5	0.0085%
ATL	94/07	59819	2707	7	0.0117%	2447	4.0907%	212	0.3544%	38	0.0635%	3	0.0050%
ATL	94/08	61489	1272	44	0.0716%	963	1.5666%	260	0.4230%	0	0.0000%	5	0.0081%
ATL	94/09	59324	829	4	0.0067%	621	1.0468%	183	0.3085%	3	0.0051%	18	0.0303%
ATL	94/10	61339	1418	0	0.0000%	1236	2.0150%	173	0.2820%	9	0.0147%	0	0.0000%
ATL	94/11	59124	734	0	0.0000%	591	0.9996%	113	0.1911%	0	0.0000%	30	0.0507%
ATL	94/12	62002	798	0	0.0000%	721	1.1629%	70	0.1129%	0	0.0000%	7	0.0113%
ATL	95/01	61161	666	11	0.0180%	541	0.8846%	97	0.1586%	0	0.0000%	17	0.0278%
ATL	95/02	55912	972	1	0.0018%	831	1.4863%	114	0.2039%	4	0.0072%	22	0.0393%
ATL	95/03	64105	885	8	0.0125%	622	0.9703%	207	0.3229%	45	0.0702%	3	0.0047%
ATL	95/04	61474	1037	28	0.0455%	805	1.3095%	145	0.2359%	29	0.0472%	30	0.0488%
ATL	95/05	64075	1030	1	0.0016%	835	1.3031%	155	0.2902%	0	0.0000%	8	0.0125%
ATL	95/06	63702	2174	0	0.0000%	1558	2.4458%	463	0.7268%	127	0.1994%	26	0.0408%
ATL	95/07	65276	1579	43	0.0659%	1063	1.6285%	436	0.6679%	34	0.0521%	3	0.0046%
ATL	95/08	66381	2337	0	0.0000%	1965	2.9602%	306	0.4610%	66	0.0994%	0	0.0000%
ATL	95/09	62109	1842	51	0.0821%	1291	2.0786%	482	0.7761%	14	0.0225%	4	0.0064%
ATL	95/10	66474	1792	0	0.0000%	1225	1.8428%	556	0.8364%	0	0.0000%	11	0.0165%
ATL	95/11	63453	1984	0	0.0000%	1566	2.4680%	344	0.5421%	30	0.0473%	44	0.0693%
ATL	95/12	67255	2173	0	0.0000%	1705	2.5351%	437	0.6498%	8	0.0119%	23	0.0342%
ATL	96/01	65623	2359	2	0.0030%	2145	3.2687%	208	0.3170%	2	0.0030%	2	0.0030%
ATL	96/02	62372	1439	0	0.0000%	850	1.3628%	407	0.6525%	187	0.2577%	15	0.0240%
ATL	96/03	69055	2778	11	0.0159%	2501	3.6216%	222	0.3215%	43	0.0623%	1	0.0014%
ATL	96/04	67454	1672	27	0.0400%	981	1.4543%	658	0.9725%	7	0.0104%	1	0.0015%

Prepared by ATO-200 OPSNET

Air Traffic Operations Network - OPSNET
Total Traffic and Delays by Cause
for Select Airports

Facility	YY/MM	Traffic	Delays	EquipDelay	%ops	Weather	%ops	Volume	%ops	Runway	%ops	Other	%ops
ATL	96/05	[illegible]	1021	0	0.0000%	595	0.8999%	401	0.6065%	8	0.0121%	17	0.0257%
ATL	96/06	[illegible]	1097	0	0.0000%	955	1.5502%	141	0.2289%	0	0.0000%	1	0.0016%
ATL	96/07	61166	959	0	0.0000%	833	1.3618%	121	0.1978%	0	0.0000%	5	0.0082%
ATL	96/08	61958	2011	0	0.0000%	1288	2.0789%	571	0.9216%	8	0.0081%	152	0.2453%
ATL	96/09	58519	1533	0	0.0000%	1050	1.7943%	376	0.6425%	8	0.0017%	108	0.1811%
ATL	96/10	63105	1007	6	0.0079%	680	1.0776%	275	0.4358%	15	0.0238%	32	0.0507%
ATL	96/11	60255	1347	80	0.1328%	998	1.6530%	183	0.3037%	48	0.0797%	40	0.0664%
ATL	96/12	61701	897	6	0.0065%	745	1.2074%	145	0.2350%	0	0.0000%	5	0.0049%
ATL	97/01	60856	1138	0	0.0000%	930	1.5282%	199	0.3270%	0	0.0000%	9	0.0148%
ATL	97/02	57882	1957	0	0.0000%	1753	3.0286%	186	0.3213%	0	0.0000%	18	0.0311%
ATL	97/03	67548	1111	15	0.0222%	820	1.2140%	262	0.3879%	0	0.0000%	14	0.0207%
ATL	97/04	64806	1726	0	0.0000%	1369	2.1125%	337	0.5200%	16	0.0247%	4	0.0062%
ATL	97/05	66902	2011	55	0.0822%	1503	2.2466%	412	0.6158%	22	0.0329%	19	0.0284%
ATL	97/06	66595	2364	4	0.0060%	2043	3.0678%	273	0.4099%	33	0.0496%	11	0.0165%
ATL	97/07	68789	2986	0	0.0000%	2602	3.7826%	364	0.5292%	8	0.0116%	12	0.0174%
ATL	97/08	69340	2021	1	0.0014%	1416	2.0421%	574	0.8278%	0	0.0000%	30	0.0433%
ATL	97/09	65385	2082	0	0.0000%	1796	2.7468%	279	0.4267%	0	0.0000%	7	0.0107%
ATL	97/10	65896	2222	0	0.0000%	1684	2.5555%	422	0.6404%	80	0.1214%	36	0.0546%
ATL	97/11	66356	3307	4	0.0060%	2487	3.7479%	445	0.6706%	352	0.5305%	19	0.0286%
ATL	97/12	68093	2130	26	0.0382%	1655	2.4305%	430	0.6315%	0	0.0000%	19	0.0279%
ATL	98/01	67679	2802	3	0.0044%	2357	3.4826%	352	0.5201%	12	0.0177%	78	0.1152%
ATL	98/02	61702	2573	1	0.0016%	2265	3.6709%	296	0.4797%	0	0.0000%	11	0.0178%
ATL	98/03	70838	2209	48	0.0678%	1971	2.7824%	185	0.2612%	0	0.0000%	5	0.0071%
DFW	92/01	63373	3156	20	0.0316%	2476	3.9070%	640	1.0099%	12	0.0189%	8	0.0126%
DFW	92/02	59976	1414	10	0.0167%	829	1.3822%	551	0.9187%	17	0.0283%	7	0.0117%
DFW	92/03	63969	1531	0	0.0000%	1144	1.7878%	386	0.6032%	0	0.0000%	1	0.0016%
DFW	92/04	62933	1384	37	0.0588%	861	1.3681%	468	0.7436%	18	0.0286%	0	0.0000%
DFW	92/05	64130	2353	0	0.0000%	1768	2.7569%	528	0.8233%	20	0.0312%	37	0.0577%
DFW	92/06	63545	1673	0	0.0000%	1168	1.8381%	455	0.7160%	41	0.0645%	9	0.0142%
DFW	92/07	65865	1578	49	0.0744%	838	1.2723%	637	0.9671%	9	0.0137%	45	0.0683%
DFW	92/08	66018	1291	8	0.0121%	728	1.1027%	462	0.6998%	74	0.1121%	19	0.0288%
DFW	92/09	63005	1154	11	0.0175%	693	1.0999%	273	0.4333%	144	0.2286%	33	0.0524%
DFW	92/10	65193	1148	11	0.0169%	675	1.0354%	371	0.5691%	59	0.0905%	32	0.0491%
DFW	92/11	61138	2230	119	0.1946%	1669	2.7299%	422	0.6902%	0	0.0000%	20	0.0327%
DFW	92/12	64830	3867	8	0.0123%	3507	5.4095%	332	0.5121%	0	0.0000%	20	0.0308%
DFW	93/01	63978	4702	12	0.0188%	4346	6.7930%	344	0.5377%	0	0.0000%	0	0.0000%
DFW	93/02	59576	1806	0	0.0000%	1546	2.5950%	260	0.4364%	0	0.0000%	0	0.0000%
DFW	93/03	66251	2287	1	0.0015%	2035	3.0717%	208	0.3140%	0	0.0000%	43	0.0649%
DFW	93/04	64324	2245	0	0.0000%	1563	2.4299%	449	0.6980%	217	0.3374%	16	0.0249%
DFW	93/05	66291	1614	129	0.1946%	1151	1.7363%	504	0.7603%	10	0.0151%	20	0.0302%
DFW	93/06	[illegible]	2542	24	0.0368%	[illegible]	3.1427%	425	0.6477%	22	0.0335%	18	0.0244%
DFW	93/07	71610	711	17	0.0237%	183	0.2556%	511	0.7136%	0	0.0000%	0	0.0000%
DFW	93/08	71872	2048	22	0.0306%	1568	2.1817%	440	0.6122%	5	0.0070%	13	0.0181%
DFW	93/09	68328	1279	73	0.1068%	748	1.0947%	448	0.6557%	0	0.0000%	10	0.0146%
DFW	93/10	70280	2625	10	0.0142%	2354	3.3495%	439	0.6246%	0	0.0000%	22	0.0313%
DFW	93/11	65567	1812	0	0.0000%	1440	2.1962%	345	0.5262%	0	0.0000%	27	0.0412%
DFW	93/12	70303	3023	1	0.0014%	2517	3.5802%	500	0.7112%	0	0.0000%	5	0.0071%
DFW	94/01	68458	3742	50	0.0730%	3231	4.7197%	451	0.6588%	5	0.0073%	5	0.0073%
DFW	94/02	62558	1299	154	0.2462%	812	1.2980%	324	0.5179%	0	0.0000%	9	0.0144%
DFW	94/03	71052	1990	0	0.0000%	1500	2.1111%	457	0.6432%	14	0.0197%	19	0.0257%
DFW	94/04	67371	2550	15	0.0223%	2120	3.1468%	415	0.6160%	0	0.0000%	0	0.0000%
DFW	94/05	69437	2934	60	0.0864%	2018	2.9034%	747	1.0758%	56	0.0806%	55	0.0792%

Prepared by ATO-200, OPSNET

Air Traffic Operations Network - OPSNET
Total Traffic and Delays by Cause
for Select Airports

Facility	YY/MM	Traffic	Delays	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
DFW	94/06	68965	2065	12	0.0174%	1555	2.2548%	496	0.7192%	0	0.0000%	7	0.002[illegible]%
DFW	94/07	72517	2519	1	0.0014%	1874	2.5842%	531	0.7322%	106	0.1462%	7	0.0097%
DFW	94/08	73015	1949	1	0.0014%	1196	1.6380%	698	0.9560%	41	0.0562%	13	0.0178%
DFW	94/09	71668	1653	0	0.0000%	972	1.3563%	678	0.9460%	0	0.0000%	5	0.0042%
DFW	94/10	73319	4321	[illegible]	0.0055%	3443	4.6959%	852	1.182[illegible]%	10	0.0136%	12	0.0164%
DFW	94/11	69908	2380	0	0.0000%	1839	2.6306%	504	0.7209%	8	0.0114%	29	0.0415%
DFW	94/12	73109	4275	[illegible]	0.0014%	3577	4.8927%	692	0.9465%	0	0.0000%	5	0.0068%
DFW	95/01	72667	2438	3	0.0041%	1968	2.7082%	429	0.5904%	1	0.0014%	37	0.0509%
DFW	95/02	66368	2721	[illegible]	0.00[illegible]%	2247	3.385[illegible]%	462	0.8961%	0	0.0000%	10	0.0151%
DFW	95/03	73461	3837	24	0.0327%	2874	3.9123%	934	1.2714%	0	0.0000%	5	0.0068%
DFW	95/04	70468	1860	9	0.0128%	1413	2.0052%	426	0.6045%	11	0.0156%	1	0.0014%
DFW	95/05	71643	2158	21	0.0293%	1490	2.0798%	561	0.7830%	64	0.0893%	22	0.0307%
DFW	95/06	73714	1461	0	0.0000%	820	1.1124%	637	0.8642%	4	0.0054%	0	0.0000%
DFW	95/07	76931	1519	6	0.0078%	1243	1.8157%	270	0.3510%	0	0.0000%	0	0.0000%
DFW	95/08	78720	1816	0	0.0000%	1275	1.8197%	529	0.8720%	0	0.0000%	12	0.0152%
DFW	95/09	74678	1835	1	0.0013%	922	1.2347%	528	0.7071%	19	0.0254%	165	0.2210%
DFW	95/10	76867	1529	241	0.3135%	490	0.6375%	732	0.9523%	7	0.0091%	59	0.0768%
DFW	95/11	73042	645	0	0.0000%	150	0.2054%	478	0.6544%	17	0.0233%	0	0.0000%
DFW	95/12	72364	1992	8	0.0111%	1715	2.3700%	220	0.3040%	15	0.0207%	34	0.0470%
DFW	96/01	70562	2056	0	0.0000%	1838	2.6046%	212	0.3004%	0	0.0000%	6	0.0085%
DFW	96/02	66074	564	14	0.0212%	231	0.3496%	319	0.4828%	0	0.0000%	0	0.0000%
DFW	96/03	72616	880	0	0.0000%	603	0.8304%	254	0.3498%	23	0.0317%	0	0.0000%
DFW	96/04	69844	1421	222	0.3179%	827	1.1841%	362	0.5183%	10	0.0143%	0	0.0000%
DFW	96/05	71911	886	124	0.1724%	451	0.6272%	306	0.4255%	0	0.0000%	5	0.0070%
DFW	96/06	72612	1504	12	0.0165%	1262	1.7380%	222	0.3057%	0	0.0000%	8	0.0110%
DFW	96/07	74025	1727	23	0.0311%	1429	1.9304%	267	0.3607%	4	0.0054%	4	0.0054%
DFW	96/08	76067	2428	111	0.1459%	2132	2.8028%	173	0.2274%	0	0.0000%	12	0.0158%
DFW	96/09	71751	2080	274	0.3819%	1363	1.8996%	429	0.5979%	0	0.0000%	14	0.0195%
DFW	96/10	76792	1799	0	0.0000%	1143	1.4884%	653	0.8503%	0	0.0000%	3	0.0039%
DFW	96/11	72777	1199	0	0.0000%	787	1.0814%	385	0.5290%	27	0.0371%	0	0.0000%
DFW	96/12	78638	570	8	0.0102%	287	0.3650%	274	0.3484%	1	0.0013%	0	0.0000%
DFW	97/01	77316	644	0	0.0000%	304	0.3932%	330	0.4268%	10	0.0129%	0	0.0000%
DFW	97/02	71267	1383	132	0.1852%	874	1.2264%	323	0.4532%	51	0.0716%	3	0.0042%
DFW	97/03	83723	743	32	0.0382%	525	0.6271%	178	0.2126%	3	0.0036%	5	0.0060%
DFW	97/04	76395	1200	0	0.0000%	1056	1.3823%	114	0.1492%	0	0.0000%	30	0.0393%
DFW	97/05	80690	1202	5	0.0062%	863	1.0695%	297	0.3681%	11	0.0136%	26	0.0322%
DFW	97/06	80589	1778	35	0.0434%	1390	1.7248%	302	0.3747%	0	0.0000%	51	0.0633%
DFW	97/07	78750	1348	0	0.0000%	1173	1.4895%	175	0.2222%	0	0.0000%	0	0.0000%
DFW	97/08	79164	1134	0	0.0000%	746	0.9423%	363	0.4585%	24	0.0303%	1	0.0013%
DFW	97/09	78978	929	0	0.0000%	482	0.6282%	425	0.5521%	14	0.0182%	8	0.0104%
DFW	97/10	81449	1919	24	0.0295%	1634	2.0062%	234	0.2873%	1	0.0012%	26	0.0319%
DFW	97/11	76683	831	0	0.0000%	287	0.3743%	278	0.3625%	10	0.0130%	56	0.0730%
DFW	97/12	76308	807	12	0.0157%	562	0.7365%	223	0.2922%	0	0.0000%	10	0.0131%
DFW	98/01	76268	887	16	0.0210%	737	0.9663%	121	0.1587%	13	0.0170%	0	0.0000%
DFW	98/02	73273	601	0	0.0000%	402	0.5486%	188	0.2566%	11	0.0150%	0	0.0000%
DFW	98/03	78160	855	0	0.0000%	660	0.8444%	164	0.2098%	0	0.0000%	31	0.0397%
LAX	92/01	57276	588	1	0.0017%	132	0.2305%	434	0.7577%	20	0.0349%	1	0.0017%
LAX	92/02	52221	2705	2	0.0038%	950	1.8192%	558	1.0685%	1165	2.2309%	30	0.0574%
LAX	92/03	55481	3005	0	0.0000%	1311	2.3630%	378	0.6813%	1292	2.3287%	24	0.0433%
LAX	92/04	54504	1404	77	0.1413%	353	0.6477%	759	1.3926%	23	0.0422%	192	0.3523%
LAX	92/05	55070	1598	47	0.0853%	146	0.2651%	802	1.4563%	70	0.1271%	533	0.9679%
LAX	92/06	58151	559	0	0.0000%	89	0.1530%	464	0.7979%	5	0.0086%	1	0.0017%

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Air Traffic Operations Network - OPSNET
Total Traffic and Delays by Cause
for Select Airports

Facility	YYMM	Traffic	Delays	Equipment	Equipment %	Weather	Weather %	Volume	Volume %	Runway	Runway %	Other	Other %
LAX	92/07	59377	682	0	0.0000%	271	0.4564%	402	0.677[illegible]	0	0.0000%	9	0.0152%
LAX	92/08	60457	665	0	0.0000[illegible]	119	0.1968[illegible]	289	0.47[illegible]	37	0.0612%	220	0.3639%
LAX	92/09	57242	521	22	0.0384%	279	0.4874[illegible]	203	0.3546%	[illegible]	0.0087%	13	0.0210[illegible]
LAX	92/10	57417	1020	[illegible]	0.0087%	367	0.5392%	507	0.8830%	37	0.0644[illegible]	104	0.1811[illegible]
LAX	92/11	53750	231	13	0.0242%	17	0.0316%	181	0.3367%	20	0.0372[illegible]	0	0.0000%
LAX	92/12	55242	377	31	0.0561[illegible]	79	0.1358[illegible]	236	0.4272%	[illegible]	0.0163[illegible]	26	0.0471[illegible]
LAX	93/01	55280	1606	0	0.0000%	1280	2.3155%	178	0.3220%	10	0.0181[illegible]	138	0.2496[illegible]
LAX	93/02	51945	874	0	0.0000%	433	0.8336%	177	0.340[illegible]	10	0.0193[illegible]	4	0.0077%
LAX	93/03	58201	702	[illegible]	0.1100[illegible]	326	0.5601[illegible]	295	0.5069%	13	0.0206[illegible]	[illegible]	0.0086%
LAX	93/04	56899	376	0	0.0000%	50	0.0666%	254	0.4464%	79	0.1388[illegible]	5	0.0088[illegible]
LAX	93/05	55311	225	0	0.0000%	50	0.0904[illegible]	140	0.2883%	13	0.0235[illegible]	[illegible]	0.0036[illegible]
LAX	93/06	58135	362	132	0.2271[illegible]	79	0.135[illegible]	150	0.2580%	[illegible]	0.0017%	0	0.0000%
LAX	93/07	59033	355	13	0.0254[illegible]	79	0.127[illegible]	262	0.4438[illegible]	0	0.0000%	[illegible]	0.0051[illegible]
LAX	93/08	60771	433	33	0.0543[illegible]	89	0.1465[illegible]	283	0.4657%	28	0.0461[illegible]	0	0.0000%
LAX	93/09	5628[illegible]	629	[illegible]	0.0109[illegible]	393	0.7108[illegible]	193	0.3491[illegible]	0	0.0000%	37	0.0669[illegible]
LAX	93/10	5497[illegible]	513	0	0.0000%	204	0.3711[illegible]	249	0.452[illegible]	0	0.0000[illegible]	60	0.1091[illegible]
LAX	93/11	5319[illegible]	218	0	0.0000%	79	0.1485[illegible]	139	0.261[illegible]	0	0.0000%	0	0.0000%
LAX	93/12	56044	134	0	0.0000%	79	0.0258[illegible]	87	0.1445[illegible]	0	0.0000%	38	0.0678%
LAX	94/01	50729	343	0	0.0000%	231	0.4554%	98	0.1932[illegible]	[illegible]	0.0099%	[illegible]	0.0177%
LAX	94/02	47354	521	0	0.0000%	348	0.7349[illegible]	143	0.3020%	1	0.0021%	29	0.061[illegible]
LAX	94/03	50915	621	11	0.0334%	373	0.7326[illegible]	148	0.3882[illegible]	[illegible]	0.0098[illegible]	38	0.0746[illegible]
LAX	94/04	55208	407	13	0.0235%	170	0.3079[illegible]	148	0.3333[illegible]	13	0.0290[illegible]	24	0.0435%
LAX	94/05	578[illegible]	735	77	0.1331%	324	0.5601[illegible]	311	0.5376[illegible]	0	0.0000%	23	0.0398[illegible]
LAX	94/06	58939	502	0	0.0000[illegible]	190	0.3224[illegible]	284	0.481[illegible]	25	0.0424[illegible]	5	0.0051%
LAX	94/07	60041	874	11	0.0183[illegible]	470	0.7828[illegible]	382	0.6379%	0	0.0000%	10	0.0167[illegible]
LAX	94/08	6192[illegible]	374	0	0.0000%	120	0.193[illegible]	209	0.3375[illegible]	11	0.017[illegible]	34	0.0549[illegible]
LAX	94/09	5797[illegible]	389	[illegible]	0.0069[illegible]	197	0.3398%	148	0.3174[illegible]	1	0.001[illegible]	3	0.0052%
LAX	94/10	60091	957	104	0.1731[illegible]	566	0.941[illegible]	274	0.4560%	0	0.0000%	13	0.0216%
LAX	94/11	56812	758	159	0.2799[illegible]	338	0.5949[illegible]	248	0.4365[illegible]	0	0.0000%	13	0.0229%
LAX	94/12	57104	915	0	0.0000%	651	1.1400[illegible]	240	0.4203[illegible]	20	0.0350%	4	0.007[illegible]
LAX	95/01	58761	2264	0	0.0000%	2148	3.6521[illegible]	505	0.8594[illegible]	0	0.0000%	13	0.0221[illegible]
LAX	95/02	54723	1243	[illegible]	0.003[illegible]	722	1.3194[illegible]	316	0.5775[illegible]	55	0.1005[illegible]	148	0.2705[illegible]
LAX	95/03	60038	1135	0	0.0000%	774	1.2892%	348	0.5796%	[illegible]	0.0050%	10	0.0167%
LAX	95/04	59094	1034	[illegible]	0.0135[illegible]	447	0.7564[illegible]	442	0.74[illegible]	13	0.0305%	119	0.2014[illegible]
LAX	95/05	62462	1532	[illegible]	0.0016[illegible]	919	1.4713%	467	0.74[illegible]	0	0.0000%	145	0.2321[illegible]
LAX	95/06	62518	2305	11	0.0176[illegible]	1951	3.1207[illegible]	293	0.468[illegible]	0	0.0000%	30	0.0800%
LAX	95/07	64732	1309	13	0.0201%	911	1.4073[illegible]	382	0.5901[illegible]	1	0.0015[illegible]	[illegible]	0.0031[illegible]
LAX	95/08	66328	1020	26	0.0392%	569	0.8579[illegible]	448	0.6754[illegible]	0	0.0000%	47	0.0709[illegible]
LAX	95/09	62876	978	0	0.0000%	596	0.9479%	297	0.4724[illegible]	[illegible]	0.0095[illegible]	79	0.1256[illegible]
LAX	95/10	64655	1879	[illegible]	0.0031%	1608	2.4870%	248	0.3836%	7	0.010[illegible]	14	0.021[illegible]
LAX	95/11	60944	2598	[illegible]	0.1411%	2252	3.6952[illegible]	205	0.2330[illegible]	[illegible]	0.0000%	54	0.0886%
LAX	95/12	6187[illegible]	2206	[illegible]	0.0065%	1919	3.1015[illegible]	279	0.4509%	0	0.0000%	[illegible]	0.0065[illegible]
LAX	96/01	62444	1009	13	0.028[illegible]	794	1.2715%	148	0.3139%	0	0.0000%	1	0.0016%
LAX	96/02	58642	1373	127	0.2166%	1076	1.8349[illegible]	140	0.238[illegible]	13	0.0324[illegible]	11	0.0188[illegible]
LAX	96/02	65533	2216	45	0.0687%	1936	2.9542%	234	0.3571%	0	0.0000%	[illegible]	0.0015%
LAX	96/04	63693	1065	0	0.0000%	928	1.4570%	155	0.2434%	0	0.0000%	[illegible]	0.0031%
LAX	96/05	65096	863	0	0.0000%	765	1.1752%	93	0.142[illegible]	[illegible]	0.0077[illegible]	0	0.0000%
LAX	96/06	63545	992	0	0.0000%	929	1.462[illegible]	56	0.0881%	0	0.0000%	7	0.0110%
LAX	96/07	65800	1121	215	0.3267%	705	1.0714%	148	0.224[illegible]	7	0.0106[illegible]	46	0.069[illegible]
LAX	96/08	66629	1272	[illegible]	0.00[illegible]	1116	1.674[illegible]	148	0.2221%	0	0.0000%	[illegible]	0.0090%
LAX	96/09	63050	1896	[illegible]	0.0032%	1798	2.8517%	87	0.138[illegible]	0	0.0000%	5	0.0143[illegible]
LAX	96/10	64162	2598	33	0.0514[illegible]	2450	3.8185[illegible]	79	0.1231[illegible]	0	0.0000%	38	0.0581[illegible]

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Air Traffic Operations Network - OPSNET
Total Traffic and Delays by Cause
for Select Airports

Facility	YY/MM	Traffic	Delays	Equipment	%Equipment	Weather	%Weather	Volume	%Volume	Runway	%Runway	Other	%Other
LAX	96/11	66960	162[illegible]	75	0.1230%	1405	2.3048%	126	0.206[illegible]	0	0.0000%	23	0.0377%
LAX	96/12	5263[illegible]	2346	71	0.11[illegible]	2055	3.2705[illegible]	211	0.3358%	0	0.0000%	[illegible]	0.014[illegible]
LAX	97/01	63701	1590	25	0.0392%	1424	2.2354%	80	0.12[illegible]	0	0.0000%	61	0.0958%
LAX	97/02	[illegible]	529	0	0.0000%	432	0.7403[illegible]	66	0.1131[illegible]	[illegible]	0.001[illegible]	21	0.0360[illegible]
LAX	97/03	6662[illegible]	979	0	0.0000%	832	1.2488%	51	0.1368[illegible]	[illegible]	0.0000%	52	0.0781%
LAX	97/04	528[illegible]	745	0	0.0000%	670	1.0655[illegible]	80	0.0954[illegible]	2	0.00[illegible]	19	0.0207[illegible]
LAX	97/05	64401	1350	[illegible]	0.0031[illegible]	1221	1.695[illegible]	108	0.16[illegible]	0	0.0000%	19	0.0295%
LAX	97/06	63329	2221	1	0.0016%	2053	3.2418%	168	0.2495[illegible]	0	0.0000%	9	0.014[illegible]
LAX	97/07	6758[illegible]	1657	0	0.0000%	1553	2.2979%	102	0.1509%	0	0.0000%	2	0.0030%
LAX	97/08	68213	1206	0	0.0000%	1066	1.5626[illegible]	90	0.131[illegible]	45	0.0660%	[illegible]	0.0073[illegible]
LAX	97/09	66289	422	0	0.0000%	374	0.5642[illegible]	38	0.0573%	[illegible]	0.0030%	[illegible]	0.0121[illegible]
LAX	97/10	69429	1305	[illegible]	0.0086[illegible]	1158	1.667[illegible]	125	0.16[illegible]	0	0.0000%	19	0.0230%
LAX	97/11	65811	1048	[illegible]	0.0015[illegible]	984	1.4952[illegible]	43	0.065[illegible]	0	0.0000%	20	0.0304%
LAX	97/12	66936	808	0	0.0000%	748	1.1175%	53	0.079[illegible]	0	0.0000%	2	0.0105[illegible]
LAX	98/01	68166	721	0	0.0000%	664	0.9741%	51	0.0748[illegible]	0	0.0000%	2	0.0068[illegible]
LAX	98/02	60064	1191	0	0.0000%	1060	1.7981[illegible]	67	0.1115[illegible]	0	0.0000%	44	0.0733[illegible]
LAX	98/03	6751[illegible]	1145	0	0.0000%	1034	1.5314%	89	0.1316[illegible]	0	0.0000%	33	0.0326[illegible]
ORD	92/01	691[illegible]	2739	170	0.2456[illegible]	1427	2.0635[illegible]	1103	1.59[illegible]	12	0.0174[illegible]	27	0.0390%
ORD	92/02	64409	2548	16	0.0248%	1546	2.4034%	859	1.3337%	46	0.0714[illegible]	79	0.122[illegible]
ORD	92/03	68005	4048	161	0.2367%	3078	4.5261[illegible]	681	1.0014[illegible]	72	0.105[illegible]	56	0.0823[illegible]
ORD	92/04	68794	2500	98	0.[illegible]425[illegible]	1439	2.0918[illegible]	786	1.1425%	0	0.0000%	177	0.2573[illegible]
ORD	92/05	70686	1646	19	0.[illegible]155[illegible]	939	1.3247%	816	1.1511%	27	0.0381[illegible]	33	0.0748[illegible]
ORD	92/06	71129	2763	19	0.1068%	1773	2.49[illegible]	778	1.0938%	37	0.0520%	99	0.13[illegible]
ORD	92/07	73231	5113	34	0.0464%	3905	5.3324%	1130	1.5431%	[illegible]	0.0014[illegible]	43	0.058[illegible]
ORD	92/08	74601	3500	205	0.2748[illegible]	2095	2.8083%	1094	1.4665[illegible]	17	0.0228%	89	0.1193[illegible]
ORD	92/09	70646	3856	57	0.080[illegible]	2697	3.8176%	1001	1.4169%	13	0.0184[illegible]	88	0.1246[illegible]
ORD	92/10	73027	2969	37	0.050[illegible]	1841	2.5210%	1065	1.4584[illegible]	13	0.0260%	7	0.0096[illegible]
ORD	92/11	68453	316[illegible]	25	0.0365[illegible]	2306	3.3687%	803	1.1731%	0	0.0000%	33	0.0482%
ORD	92/12	70560	3216	147	0.2083%	2212	3.1349%	843	1.194[illegible]	[illegible]	0.0099%	2	0.0099%
ORD	93/01	6875[illegible]	2715	13	0.018[illegible]	2125	3.0905[illegible]	529	0.7694[illegible]	40	0.0582%	2	0.0116[illegible]
ORD	93/02	64096	1670	88	0.0582[illegible]	1121	1.7489%	457	0.71[illegible]	42	0.0655%	14	0.021[illegible]
ORD	93/03	7130[illegible]	674[illegible]	0	0.0000%	5870	8.2319%	840	1.1780%	29	0.040[illegible]	2	0.002[illegible]
ORD	93/04	70440	3698	0	0.0000%	2814	3.9949%	786	1.1187%	29	0.1107%	18	0.0256%
ORD	93/05	73239	2527	176	0.2403[illegible]	1527	2.0850%	796	1.0841[illegible]	0	0.0000%	20	0.041[illegible]
ORD	93/06	71220	4123	104	0.1460%	3329	4.67[illegible]	608	0.853[illegible]	53	0.0744[illegible]	29	0.0407%
ORD	93/07	74049	3067	19	0.0203[illegible]	2140	2.8900%	729	0.984[illegible]	144	0.1945[illegible]	39	0.052[illegible]
ORD	93/08	74304	4788	19	0.0256[illegible]	3744	5.0388%	616	0.8290%	182	0.244[illegible]	227	0.3055%
ORD	93/09	7097[illegible]	2704	19	0.0155[illegible]	1851	2.6078[illegible]	630	0.88[illegible]	27	0.0380%	185	0.2606%
ORD	93/10	74310	3017	0	0.0000%	2061	2.7735%	834	1.1223[illegible]	101	0.135[illegible]	21	0.0283[illegible]
ORD	93/11	71360	2714	0	0.0000%	1691	2.3697%	988	1.3845[illegible]	0	0.0000%	35	0.0490%
ORD	93/12	741[illegible]	2992	[illegible]	0.0040[illegible]	2239	3.0194[illegible]	621	0.6374[illegible]	26	0.1322%	21	0.04[illegible]
ORD	94/01	6696[illegible]	4129	88	0.1314[illegible]	3646	5.4444%	377	0.5630%	13	0.0194%	5	0.0075[illegible]
ORD	94/02	6273[illegible]	2407	1	0.0016[illegible]	1849	2.9475[illegible]	395	0.6297%	133	0.21[illegible]	29	0.0462%
ORD	94/03	7612[illegible]	511	0	0.0000[illegible]	239	0.31[illegible]	251	0.329[illegible]	0	0.0000%	21	0.0276[illegible]
ORD	94/04	73387	1992	[illegible]	0.0014%	1698	2.3138[illegible]	279	0.3802%	[illegible]	0.0055[illegible]	10	0.0136[illegible]
ORD	94/05	76916	601	[illegible]	0.0026[illegible]	348	0.4524[illegible]	213	0.276[illegible]	29	0.0299[illegible]	15	0.0195[illegible]
ORD	94/06	75746	2570	0	0.0000[illegible]	2279	3.0087[illegible]	200	0.2640%	0	0.0000%	91	0.1201[illegible]
ORD	94/07	77822	2892	23	0.0296[illegible]	2629	3.3782%	148	0.1902[illegible]	41	0.052[illegible]	51	0.0655[illegible]
ORD	94/08	7907[illegible]	3032	18	0.0228[illegible]	2568	3.2476[illegible]	267	0.3377[illegible]	26	0.0329%	153	0.1935[illegible]
ORD	94/09	74679	12[illegible]	402	0.5383%	567	0.759[illegible]	234	0.3133[illegible]	[illegible]	0.0054[illegible]	41	0.0549%
ORD	94/10	77111	[illegible]	[illegible]	0.0026%	613	0.7950%	240	0.311[illegible]	20	0.0259%	11	0.0143%
ORD	94/11	72657	2180	[illegible]	0.0014%	1831	2.5201%	289	0.397[illegible]	[illegible]	0.0028[illegible]	57	0.0785%

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Air Traffic Operations Network - OPSNET
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Facility	YY/MM	Traffic	Delays	Equipment	%Ops	Weather	%Ops	Volume	%Ops	Runway	%Ops	Other	%Ops
ORD	94/12	68[illegible]	1218	152	0.2210%	945	1.3740%	120	0.1745%	0	0.0000%	1	0.0015%
ORD	95/01	69668	1745	0	0.0000%	1607	2.3067%	156	0.1952%	1	0.0014%	1	0.0014%
ORD	95/02	66868	814	0	0.0000%	496	0.7418%	109	0.15[illegible]	[illegible]	0.0135%	0	0.0000%
ORD	95/03	76886	2056	44	0.0572%	1831	2.3814%	163	0.212[illegible]	15	0.0195%	3	0.0039%
ORD	95/04	74227	2831	[illegible]	0.0027%	2590	3.489[illegible]	207	0.2789%	17	0.022[illegible]	15	0.0202%
ORD	95/05	76824	2125	22	0.0417%	1796	2.3365%	150	0.1953%	0	0.0000%	148	0.1926%
ORD	95/06	75176	3177	29	0.02[illegible]	3003	3.9945%	148	0.190[illegible]	0	0.0000%	10	0.0133%
ORD	95/07	77167	3262	211	0.2734%	2819	3.6531%	143	0.1853%	88	0.114[illegible]	1	0.0013%
ORD	95/08	79902	4029	10	0.0125%	3770	4.7183%	191	0.2390%	0	0.0000%	58	0.0726%
ORD	95/09	76430	1291	29	0.0850%	1007	1.3175%	148	0.181[illegible]	88	0.0[illegible]	18	0.0236%
ORD	95/10	79137	1045	0	0.0000%	823	1.0400%	174	0.219[illegible]	0	0.0000%	48	0.0607%
ORD	95/11	73352	3088	282	0.3844%	2385	3.2514%	221	0.3013%	109	0.1486%	91	0.1241%
ORD	95/12	73005	2534	[illegible]	0.0027%	2054	2.8135%	309	0.4233%	184	0.197[illegible]	25	0.034[illegible]
ORD	96/01	70181	4032	[illegible]	0.005[illegible]	3647	5.1958%	316	0.450[illegible]	[illegible]	0.0071%	60	0.0855%
ORD	96/02	70367	2273	29	0.0398%	1897	2.6959%	283	0.4022%	70	0.0000%	65	0.0924%
ORD	96/03	76964	2164	1	0.0013%	1784	2.3180%	366	0.4755%	5	0.0065%	[illegible]	0.0104%
ORD	96/04	75477	2614	22	0.0291%	2345	3.1069%	148	0.1895%	101	0.1338%	3	0.0040%
ORD	96/05	75491	4993	0	0.0000%	4801	6.3597%	190	0.251[illegible]	0	0.0000%	[illegible]	0.0026%
ORD	96/06	77222	3844	0	0.0000%	3283	4.2514%	288	0.373[illegible]	0	0.0000%	73	0.0945%
ORD	96/07	78989	2979	6	0.0076%	2540	3.2156%	150	0.189[illegible]	184	0.2329%	99	0.1253%
ORD	96/08	81324	1852	[illegible]	0.0[illegible]37%	1503	1.848[illegible]	189	0.2324%	18	0.0221%	139	0.1[illegible]
ORD	96/09	76337	1758	0	0.0000%	1501	1.9663%	206	0.269[illegible]	7	0.0013%	50	0.0655%
ORD	96/10	79145	1698	55	0.0[illegible]95%	1220	1.5415%	290	0.3285%	0	0.0000%	163	0.2060%
ORD	96/11	73332	628	65	0.0614%	398	0.542[illegible]	67	0.0914%	115	0.1[illegible]	3	0.0041%
ORD	96/12	73751	2871	[illegible]	0.002[illegible]	2465	3.3423%	140	0.1898%	[illegible]	0.0081%	58	0.0786%
ORD	97/01	69818	2996	238	0.341[illegible]	2461	3.5350%	148	0.212[illegible]	37	0.0531%	112	0.1[illegible]
ORD	97/02	671[illegible]	2336	0	0.0000%	2011	2.9828%	174	0.1845%	192	0.2857%	[illegible]	0.0134%
ORD	97/03	77453	866	26	0.0336%	564	0.7282%	118	0.1[illegible]68%	88	0.0452%	125	0.1814%
ORD	97/04	74265	1826	6	0.0081%	1725	2.3221%	91	0.1225%	0	0.0000%	[illegible]	0.0054%
ORD	97/05	74899	1298	6	0.0080%	1183	1.5795%	104	0.1389%	0	0.0000%	[illegible]	0.006[illegible]
ORD	97/06	74406	2033	22	0.0296%	1850	2.4864%	148	0.194[illegible]	16	0.0215%	0	0.0000%
ORD	97/07	77691	2940	[illegible]	0.0013%	2722	3.5036%	207	0.2664%	[illegible]	0.0039%	22	0.0283%
ORD	97/08	77075	1938	11	0.0162%	1806	2.3432%	118	0.1531%	0	0.0000%	0	0.0000%
ORD	97/09	74055	1122	0	0.0000%	955	1.2896%	126	0.1701%	29	0.0392%	18	0.0[illegible]
ORD	97/10	76504	947	7	0.0091%	563	0.7359%	190	0.2484%	13	0.01[illegible]	174	0.2274%
ORD	97/11	69569	751	131	0.1883%	514	0.7388%	88	0.1265%	[illegible]	0.0029%	16	0.0230%
ORD	97/12	73169	1761	29	0.116[illegible]	1461	1.9962%	174	0.2432%	16	0.0260%	16	0.021[illegible]
ORD	98/01	71342	2577	0	0.0000%	2372	3.3248%	164	0.2299%	0	0.0000%	41	0.0575%
ORD	98/02	67301	1780	11	0.0178%	1595	2.369[illegible]	95	0.141[illegible]	68	0.101[illegible]	10	0.014[illegible]
ORD	98/03	74021	3222	15	0.0203%	3019	4.0786%	174	0.1[illegible]	6	0.0081%	68	0.0919%
PHX	92/01	41234	300	29	0.0606%	97	0.2352%	178	0.431[illegible]	0	0.0000%	0	0.0000%
PHX	92/02	3919[illegible]	402	65	0.1658%	91	0.2322%	241	0.6149%	0	0.0000%	[illegible]	0.0128%
PHX	92/03	41762	559	29	0.0766%	262	0.6274%	258	0.617[illegible]	0	0.0000%	7	0.0168%
PHX	92/04	42425	425	29	0.1461%	14	0.0330%	339	0.7991%	0	0.0000%	10	0.0236%
PHX	92/05	41397	518	29	0.1715%	138	0.3334%	299	0.7223%	10	0.0242%	0	0.0000%
PHX	92/06	40995	314	29	0.029[illegible]	45	0.1098%	257	0.626[illegible]	0	0.0000%	0	0.0000%
PHX	92/07	39906	282	0	0.0000%	112	0.2807%	170	0.4260%	0	0.0000%	0	0.0000%
PHX	92/08	40135	436	29	0.0723%	227	0.5656%	151	0.3762%	29	0.0723%	0	0.0000%
PHX	92/09	38746	257	20	0.0256%	[illegible]	0.0129%	207	0.5342%	7	0.0181%	28	0.0723%
PHX	92/10	42339	138	11	0.030[illegible]	26	0.0614%	95	0.226[illegible]	[illegible]	0.004[illegible]	1	0.0024%
PHX	92/11	4140[illegible]	84	11	0.0266%	0	0.0000%	73	0.1763%	0	0.0000%	0	0.0000%
PHX	92/12	40541	285	10	0.0247%	217	0.5353%	50	0.1233%	0	0.0000%	8	0.0197%

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Facility	YYMM	Traffic	Delays	Equipment	%Ops	Weather	%Ops	Volume	%Ops	Runway	%Ops	Other	%Ops
PHX	93/01	43472	490	38	0.0874%	362	0.8327%	81	0.1863%	9	0.0207%	0	0.0000%
PHX	93/02	40256	154	10	0.0248%	91	0.2261%	48	0.1192%	2	0.0050%	3	0.0075%
PHX	93/03	45240	241	3	0.0066%	167	0.3691%	56	0.1238%	15	0.0332%	0	0.0000%
PHX	93/04	44372	61	0	0.0000%	2	0.0045%	59	0.1330%	0	0.0000%	0	0.0000%
PHX	93/05	45442	88	15	0.0330%	25	0.0550%	41	0.0902%	0	0.0000%	7	0.0154%
PHX	93/06	43239	167	0	0.0000%	5	0.0116%	134	0.3099%	16	0.0370%	12	0.0278%
PHX	93/07	44373	28	19	0.0428%	2	0.0068%	6	0.0135%	0	0.0000%	0	0.0000%
PHX	93/08	43875	92	0	0.0000%	53	0.1208%	34	0.0775%	5	0.0114%	0	0.0000%
PHX	93/09	43634	51	8	0.0183%	8	0.0183%	34	0.0779%	0	0.0000%	1	0.0023%
PHX	93/10	45019	94	0	0.0000%	30	0.0666%	61	0.1355%	0	0.0000%	3	0.0067%
PHX	93/11	43996	40	0	0.0000%	18	0.0409%	22	0.0500%	0	0.0000%	0	0.0000%
PHX	93/12	46205	9	0	0.0000%	2	0.0043%	7	0.0151%	0	0.0000%	0	0.0000%
PHX	94/01	46856	51	0	0.0000%	2	0.0043%	36	0.0768%	0	0.0000%	13	0.0277%
PHX	94/02	43174	75	0	0.0000%	41	0.0950%	34	0.0788%	0	0.0000%	0	0.0000%
PHX	94/03	49382	174	0	0.0000%	87	0.1762%	84	0.1701%	3	0.0061%	0	0.0000%
PHX	94/04	44770	52	7	0.0156%	11	0.0246%	34	0.0759%	0	0.0000%	0	0.0000%
PHX	94/05	45632	123	0	0.0000%	23	0.0504%	78	0.1709%	22	0.0482%	0	0.0000%
PHX	94/06	45071	86	3	0.0067%	13	0.0288%	70	0.1553%	0	0.0000%	0	0.0000%
PHX	94/07	46387	185	12	0.0259%	90	0.1940%	72	0.1552%	2	0.0043%	9	0.0194%
PHX	94/08	46354	120	10	0.0216%	69	0.1489%	28	0.0604%	3	0.0065%	10	0.0216%
PHX	94/09	44951	210	0	0.0000%	147	0.3270%	63	0.1402%	0	0.0000%	0	0.0000%
PHX	94/10	48069	134	6	0.0125%	23	0.0478%	102	0.2121%	3	0.0062%	0	0.0000%
PHX	94/11	45523	71	0	0.0000%	9	0.0198%	62	0.1362%	0	0.0000%	0	0.0000%
PHX	94/12	46497	644	0	0.0000%	464	0.9979%	158	0.3398%	0	0.0000%	22	0.0473%
PHX	95/01	47587	449	0	0.0000%	315	0.6619%	134	0.2816%	0	0.0000%	0	0.0000%
PHX	95/02	44947	368	0	0.0000%	228	0.5073%	140	0.3115%	0	0.0000%	0	0.0000%
PHX	95/03	50440	390	0	0.0000%	45	0.0892%	327	0.6483%	14	0.0278%	4	0.0079%
PHX	95/04	45291	264	0	0.0000%	64	0.1413%	182	0.4018%	10	0.0221%	8	0.0177%
PHX	95/05	48232	79	0	0.0000%	1	0.0021%	78	0.1617%	0	0.0000%	0	0.0000%
PHX	95/06	47853	87	0	0.0000%	6	0.0125%	64	0.1337%	0	0.0000%	17	0.0355%
PHX	95/07	48661	172	9	0.0185%	50	0.1028%	110	0.2261%	2	0.0041%	1	0.0021%
PHX	95/08	48489	344	8	0.0165%	208	0.4291%	128	0.2641%	0	0.0000%	0	0.0000%
PHX	95/09	46013	186	61	0.1326%	19	0.0413%	88	0.1913%	18	0.0391%	0	0.0000%
PHX	95/10	48510	219	70	0.1443%	6	0.0124%	129	0.2659%	6	0.0124%	8	0.0165%
PHX	95/11	48041	150	0	0.0000%	29	0.0604%	116	0.2415%	0	0.0000%	5	0.0104%
PHX	95/12	51316	152	0	0.0000%	7	0.0136%	137	0.2670%	0	0.0000%	8	0.0156%
PHX	96/01	53641	311	0	0.0000%	2	0.0037%	309	0.5761%	0	0.0000%	0	0.0000%
PHX	96/02	48371	335	41	0.0848%	34	0.0703%	260	0.5375%	0	0.0000%	0	0.0000%
PHX	96/03	52261	257	0	0.0000%	46	0.0880%	205	0.3921%	4	0.0077%	2	0.0038%
PHX	96/04	49991	246	18	0.0360%	37	0.0740%	186	0.3721%	0	0.0000%	5	0.0100%
PHX	96/05	48165	294	137	0.2844%	3	0.0063%	157	0.3260%	0	0.0000%	0	0.0000%
PHX	96/06	46614	89	4	0.0086%	7	0.0150%	77	0.1652%	0	0.0000%	1	0.0021%
PHX	96/07	47885	429	7	0.0146%	200	0.4177%	128	0.2673%	0	0.0000%	94	0.1963%
PHX	96/08	48068	511	0	0.0000%	183	0.3807%	311	0.6470%	0	0.0000%	17	0.0354%
PHX	96/09	46835	816	0	0.0000%	366	0.7848%	447	0.9545%	0	0.0000%	3	0.0064%
PHX	96/10	49655	487	60	0.1208%	74	0.1490%	317	0.6384%	0	0.0000%	36	0.0725%
PHX	96/11	47865	282	0	0.0000%	21	0.0439%	227	0.4743%	0	0.0000%	34	0.0710%
PHX	96/12	49127	206	7	0.0142%	11	0.0224%	188	0.3827%	0	0.0000%	0	0.0000%
PHX	97/01	48946	430	1	0.0020%	127	0.2595%	282	0.5761%	0	0.0000%	20	0.0409%
PHX	97/02	46547	526	0	0.0000%	168	0.3609%	310	0.6660%	0	0.0000%	48	0.1031%
PHX	97/03	54076	512	0	0.0000%	5	0.0092%	501	0.9265%	6	0.0111%	0	0.0000%
PHX	97/04	49219	699	0	0.0000%	264	0.5364%	402	0.8168%	0	0.0000%	33	0.0670%

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Mr. HYDE. I'll just ask one more question. Ms. McFadden, in 1990, Congress passed a new tax known as the Passenger Facility Charge, or PFC, to fund the construction of new airport capacity. I shattered a solemn pledge and voted for that tax in the fruitless expectation that this would help fund a third airport for the Chicago area. Unfortunately, we gave control of these funds to current airport operators who have no interest in building airport capacity to compete with their own existing capacity. Do you think we should place control of those funds in some other entity?

Ms. MCFADDEN. Mr. Chairman, let me say, in response to that question, that you are not the only person who has raised a concern about the use of PFCs and their interplay with competition and with capacity in our aviation system. The Secretary, today, has announced that we will be looking at the issue and a variety of other airport issues to see their implications for competition in the aviation industry. The use of PFCs will be one of the issues that a group of individuals at the Department of Transportation will be examining. We don't know where that review will go, and so I don't have a direct answer to your question. But it is a question that we will be examining.

Mr. HYDE. I thank you.

And, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman. If we could have a meeting about unanswered letters, I'd like to join you in that because I've been writing the Attorney General for months now and I haven't gotten any answers either, but I only sent it to one person. And you didn't get answers because you sent it to so many. Maybe there's some median that we have to hit here that will elicit responses.

Mr. HYDE. Maybe we need hearings on the post office. [Laughter.]

Mr. CONYERS. Well, it hadn't occurred to me that maybe they didn't get the letters but—no. Tell me, witnesses, why do I feel like I need a couple of Alka-Seltzers on this subject? I mean, you approach us here, you're very calm and not nervous at all, but what's going on in the airline industry? I mean, this thing is—they're presenting convulsions in our economic system, in our transportation. I thought you would be sounding the death knell now of some impending crisis or—I mean, it sounds like, outside of the usual fooling around that is always indulged in, in our market system, that what I get here is that everything is mostly okay. I thought just the opposite. I thought that we had a very difficult situation. And so, I want to ask the assistant attorney general, do you prescribe two aspirins and wake up tomorrow and see how I'm feeling, or what?

Mr. KLEIN. I would not let my calm exterior convey that we don't have real concerns, because I think we do have real concerns. I think you put your finger on a couple of critical points, Mr. Conyers. And I would certainly echo them. I think the issues of consolidation in the airline industry are major, important, and significant. And we will certainly devote the resources, the time, and the energy to make sure that these are fully scrutinized. And if there are any antitrust problems, you can be assured that we will pursue them.

By the same token, I think the issue that both the General Counsel McFadden and I are talking about in terms of new entrants into the market, the impediments to entry, and the behaviors that may possibly have an impact on that, are things that we are clearly going to scrutinize. And so, in terms of the importance of the issue, in terms of the competitive significance, these are high on our radar screen and will get the full attention that they deserve.

Mr. CONYERS. Well, thank you very much. Then, what about the rest of the mergers and the rest of the industries? Now that I'm feeling better about airlines, what about—there was just a proposal last week that suggested that maybe Chrysler Corporation might have its world headquarters located in Berlin, not to mention financial services, telecommunications, and everybody else. Is this picture similar to the airlines, or are there other industries that have situations that you have to monitor even more closely than the airline industry?

Mr. KLEIN. Well, I think the airline industry is a critical industry to us. And I think it is, for obvious reasons, a critical industry to America's consumers and America's citizens. And we certainly are going to pay attention to that.

The other areas you're raising really are, also, very important. And I would like to make a couple of comments, if I could be allowed to expand a bit. I think what this country is going through, in terms of consolidation as we move into the 21st century, is really quite remarkable, quite profound, and will have significant implication. I think, when you look at mergers, I remember really not very long ago, Mr. Conyers, when a billion dollar merger was a huge deal. Today, a billion dollar merger—I don't want to suggest to anybody you ought to do them and we won't look at them, because we are going to look at them—but a billion dollar merger is not a huge economic event any more. And we're now looking at mergers in the range of 50 or 60 or even more billions of dollars. And I think that it is very important to this country that these mergers get the full scrutiny and analysis that they deserve. You can be assured that the merging parties will put the resources into them to defend them. I think the United States needs to put the resources in to thoroughly scrutinize them.

Now, I will be clear; even large mergers, there may be those that turn out to be good for consumers and good for the economy. I don't have an ideological or a per se view. But we need to be able to commit the resources to do the hard work. And I would hope and expect that on a truly bipartisan basis—because I don't think this is politics—I really think this is good for the welfare for the American economy as we move into the 21st century and our global markets. I think we need to commit the resources commensurate with the responsibility. From the beginning of President Clinton's administration in 1993 to today, in that short time period, the dollar value in real dollars of mergers has gone up somewhere in the neighborhood of seven or eight times. The resources of the Antitrust Division has not gone up at anywhere near that kind of clip. And we cannot——

Mr. CONYERS. It's been going down, actually, compared to——

Mr. KLEIN. Well, in——

Mr. CONYERS [continuing]. Current dollar figures.

Mr. KLEIN. In real dollars, I think that is probably true. And we cannot let that chasm continue to develop. If we do, it would be a great national mistake.

Mr. CONYERS. Thank you. Is there, Mr. Klein, one source where those of us on the committee of jurisdiction for you can repair to, to find out all of these mergers. You know, I'm getting tired of flipping through the Wall Street Journal and—you know, I read about some three times, but then I miss others. I never hear about them until a year or so later. Is there an organized place in the Library of Congress or in the Department of Justice that we can do this without commissioning a staff person?

Mr. KLEIN. Well, it depends on the nature of the merger. There are certain Hart-Scott reportable mergers we are aware of. We're not authorized to disclose those under current law. That's the restriction that Congress included in the statute.

Mr. CONYERS. You mean they're secret mergers?

Mr. KLEIN. The mergers are not secret, but the reporting requirements are. Those that, when Congress passed the Hart-Scott-Rodino Act in—I think it was back in the 1970's—they included that. Most of the major mergers are included in—there are specialty journals that BNA and some of the other specialty groups put out, and pretty much——

Mr. CONYERS. Well, here's my problem. Let's say I turn to trusty counsel. I want to know all the mergers that took place in 1998, 1997. What does she do, say "I got to take a leave for 4 days, and I'm going to read through BNA, the Journal. I'll talk to the Library of Congress. I'll call Antitrust." I mean, I don't want to find the terms, I just want to know when they happen.

Mr. KLEIN. Well, again, I'm afraid, because of the current structure, that it's probably not going to be one easy place to acquire all that information.

Mr. CONYERS. So there could be mergers going on, that if they don't get reported publicly, you can't reveal them, and we don't know about them.

Mr. KLEIN. Well, most mergers of size are reported publicly. And it is true under the current statute, any one over $15 million generally gets reported to us and the Federal Trade Commission. And that there were last year, somewhere in the neighborhood of 4,000 such mergers. But beyond that——

Mr. CONYERS. Well then, I did miss more than I thought I had. [Laughter.]

Okay. [Laughter.]

Well, let me just ask—thank you, Mr. Chairman, for indulgence. If I could ask Ms. McFadden?

Why are the unions against the proposed guidelines? And why is there some confusion about whether they're ambiguous or not? And why do we need guidelines if we've got antitrust laws?

Ms. MCFADDEN. Well, Mr. Conyers, let me deal with your last question first. The Department of Transportation has the statutory authority to protect against, and prohibit, unfair methods of competition. As we examined what we thought was going on in hub markets, competitive responses by major carriers to new entrant carriers, we had available a couple of courses of action to take. One was to bring an enforcement proceeding, under our statutory authority, to prohibit unfair methods of competition. The other was to put out some kind of guidance to the carriers to alert them and to define what, in fact, we felt was crossing the line into unlawful, anti-competitive conduct. Because this is, in some ways, uncharted territory.

Since the deregulation of the airline industry, with respect to competitive responses such as the type we're describing, we have not brought any kind of enforcement proceeding. So we decided that good public policy dictated that we would put out some kind of guidance. We put it out as proposed guidance, specifically for the reasons that you alluded to in your first question, which is that there may be some concerns out there. And there may be things that we have missed. And we wanted to make sure that we got it right. So that's why, under no obligation to do so, we felt that the best course of action was to put out policy guidance and to put it out as proposed policy guidance so, in fact, we could get input from all interested parties.

In terms of your question about the labor unions. I wouldn't want to speak for them. I have met with some labor representatives on one occasion. I'm sure we're going to have more conversations with them to understand their concerns and to see how we can address those concerns, if appropriate to address them, in our proposed competition policy.

Mr. CONYERS. Well, it just strikes me as odd that the unions—I can understand some airlines maybe having a concern or two. Is there some underlying public issue, that the airline pilots have indicated, cause them to be concerned about it?

Ms. MCFADDEN. Congressman, I think that in terms of their general concern, what I have heard from my colleagues in labor is that they view the policy—and we believe incorrectly—as seeking to protect new entrant carriers, many of whom are non-unionized. And of course, our view of our policy is that it is a competition policy, and it is not designed to protect individual competitors.

Mr. CONYERS. Thank you, Mr. Chairman. Thank the witnesses very much.

Mr. HYDE. Yes, Sir. The gentleman from Pennsylvania, Mr. Gekas.

Mr. GEKAS. I thank the Chair. Am I to infer from the testimony that you have in answer to Congressman Conyers, Mr. Klein, that if it's a merger or an alliance or an accommodation agreement between two airlines that does not reflect more than $15 million dollars in value, that you do not get involved, or cannot get involved? Am I——

Mr. KLEIN. Anything over $15 million dollars is generally reported to us under the Hart-Scott-Rodino law. That means we get an automatic filing. Any merger, alliance, joint venture, we're free to get involved and will, of course, on important airline matters. We'll certainly want to look at them.

Mr. GEKAS. As a matter of practice, when two airlines decide and sign a contract toward an alliance of some sort, do they then notify you? And, under the statutes, then you could enjoin the implementation of that agreement if you found it to be antitrust—in violation of antitrust provisions, is that the way it goes?

Mr. KLEIN. As a matter of practice, we typically would be notified by the affected airlines. And if we had competitive problems, we're free to take action in court to seek to enjoin it, or we could try to negotiate with them a solution.

Mr. GEKAS. So that the legal action comes right away. It isn't that you would issue an opinion, or an order, or a finding which would compel the two airlines in question—in my hypothetical—to, themselves, go to court to override your order? It is that you would be going into court? Is that correct?

Mr. KLEIN. That is correct. The timing may be affected by a variety of matters. But we ultimately, if we want to challenge either a merger or some first steps toward consolidation, we would have to go to court if the parties won't agree to any remedy that we propose.

Mr. GEKAS. Ms. McFadden, had stated earlier in her original testimony that the Department of Transportation doesn't get involved in that portion that I just had an exchange with, with Mr. Klein, buy rather it was in an advisory capacity. But you wanted to know what was going on. But later, in an answer to a question of Mr. Conyers, you said that you do get involved under your prohibition powers.

In the hypothetical that I gave, does or does not the Department of Transportation get in? Here's two airlines that want to merge, and it's over $15 million, no question. And the Department of Justice decides that this might be in violation of antitrust. Where is the Department of Transportation in that scenario?

Ms. MCFADDEN. The Department of Justice has the primary jurisdiction over domestic——

Mr. GEKAS. Right.

Ms. MCFADDEN [continuing]. Aviation alliances. And in that regard, we do act as colleagues and, in essence, in an advisory capacity. We also are conducting our own reviews of those alliances. The point I made in my testimony, Congressman, was that we do not have the authority to have the airlines come to us for any kind of prior approval of the alliance before they put it into effect. We have the authority to review it, but we do not have the authority to, in effect, enjoin the alliance before it goes into effect.

Mr. GEKAS. You would be advising the Department of Justice that this might be a good case in which to prohibit the alliance; is that correct? And if that were concurred by the Department of Justice, then something would proceed in court, is that correct?

Ms. MCFADDEN. That's essentially correct, Congressman. We advise the Department of Justice of our views, our analysis of the competitive implications. And given our experts' understanding of the aviation industry, we share that information and those views with the Justice Department.

Mr. GEKAS. Then the only converse question I have for Mr. Klein is, if you decide to go into court, do you consult with the Department of Transportation before you do so?

Mr. KLEIN. We certainly would. And I think there is an open and effective dialogue between the two agencies, Mr. Gekas.

Mr. GEKAS. I have no further questions, Mr. Chairman.

Mr. HYDE. I thank the gentleman.

The gentleman from California, Mr. Berman.

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Mr. BERMAN. Thank you, Mr. Chairman. On that last point, you have review authority and advisory authority with respect to domestic alliances or mergers. But I take it, there are a string of anti-competitive practices where you actually have remedial authority. As I understand it, your Draft Airline Competition Policy Statement indicates that when certain anti-competitive practices occur, you, rather than Justice, will seek cease and desist orders and fines and other kinds of remedial action. Is that right?

Ms. MCFADDEN. Yes. Congressman Berman, that's exactly right. And the distinction I was making, in essence, was that we have no authority to stop or prevent an alliance from going into effect. Once an alliance is in effect—and presumably if not challenged by the Justice Department—and we saw from the alliance's operations that there were competitive problems, we could then institute an enforcement proceeding against the alliance's operation.

Mr. BERMAN. Well——

Ms. MCFADDEN. But it would only be after it went into effect.

Mr. BERMAN. But there can be, at least hypothetical situations, where the alliance or the merger, in and of itself, by eliminating the competition at a particular hub, could be viewed as an anti-competitive practice. You don't need to wait for the operations because you know the ultimate consequence of the merger is to eliminate the competition. Can you get into that, or is that Justice?

Ms. MCFADDEN. That, we consider is the Justice Department's venue. And that's why, as Mr. Klein said, there's a very close relationship in analyzing these alliances.

Mr. BERMAN. On your Airline Competition Policy Statement, I take it you seek to define predatory pricing techniques. For example, say a new airline starts up. The airline operating out of that hub massively lowers prices to the point of actually losing money in order to destroy the competition, kill the new carrier, and then brings the prices back up.

There's another scenario which is, a new airline starts up. The established airline wants to keep some passengers on their flights and lowers their prices to be in competition. How do you define the predatory pricing tactic practices in a fashion that distinguishes between the effort to destroy the competition versus the effort to compete with the competition?

Ms. MCFADDEN. Congressman, that's a very good question. And certainly, our intent is not to stifle, deter, or in any way challenge legitimate, competitive responses. Our aim, in the competition policy, is to identify the most egregious kind of behavior that cannot be explained by any economic rationale, other than that the competitive response is designed to eliminate the competition altogether. That there is such a diversion of revenue, self diversion of revenue, or such a short-term operating loss handled by the established carrier in response to the new entrant carrier, that it can't be explained any other way.

Mr. BERMAN. Even——

Ms. MCFADDEN. And that's the line that we are trying to draw.

Mr. BERMAN. Even if the prices are the same as what the new start-up competitor charges?

Ms. MCFADDEN. We certainly do not, and the policy is not written to suggest, that matching prices is anti-competitive or is——

Mr. BERMAN. But what if it——

Ms. MCFADDEN [continuing]. In violation of the policy.

Mr. BERMAN. But what if the matching prices causes the diversion that you talked about?

Ms. MCFADDEN. Well, in the scenarios that we try to identify under our policy, it's really a combination of factors. It's matching prices and it's substantially increasing capacity on those routes that the new entrant carrier flies, to such an extent that it can't be explained other than as intending to eliminate the competition.

Mr. BERMAN. I see, the capacity expansion is part of that?

Ms. MCFADDEN. Exactly.

Mr. BERMAN. One last questions before my time expires. I guess this is, perhaps, more to the Justice Department, Mr. Klein. When you look at these new domestic alliances, do you distinguish between the merger's situation, the purchase of equity by one airline in another airline, and the code sharing, and the integration of all of that with the simple joining up of—of say, I guess one of the alliances involves simply a matching mileage program?

Mr. KLEIN. Frequent Flier.

Mr. BERMAN. Is your review of these mergers based on the individual facts as opposed to the notion of the alliance in itself?

Mr. KLEIN. Absolutely. And there are, as you point out, a wide array of potential, if you will, relationships that two airlines could enter. And each one has to be evaluated, both in terms of its potential for its anti-competitive effect and whatever efficiencies it may offer. And the mix in any particular instance is very intensely fact driven, and we would certainly look at these, because it's an important industry. But it would obviously depend on the analysis and the facts.

Mr. BERMAN. Does the Northwest/Continental deal require prior approval by the Justice Department?

Mr. KLEIN. It is one we currently have under review at this point. And obviously——

Mr. BERMAN. But can it go ahead without prior approval?

Mr. KLEIN. It cannot go ahead without the opportunity for us to challenge it.

Mr. GEKAS [presiding]. The time of the gentleman has expired. The chair recognizes the gentleman from Georgia, Mr. Barr, 5 minutes.

Mr. BARR. Thank you, Mr. Chairman.

Ms. McFadden, would you define that domestic airline alliance just very briefly, please?

Ms. MCFADDEN. I'm sorry?

Mr. BARR. Domestic airline alliance.

Ms. MCFADDEN. Well, domestic airline alliance really can mean virtually anything. It can be any kind cooperative arrangement between two or more airlines. It could involve code sharing; it could involve just a joining of Frequent Flier programs. It could involve merging of baggage handling and Super Clubs. It really can take many forms and many shapes.

Mr. BARR. So it would be fair to say, would it not, that a domestic airline alliance is not, per se, something that would be—raise the suspicions of either the Department of Transportation or the Justice Department?

Ms. MCFADDEN. I think that would be fair to say.

Mr. BARR. With regard to the—I know there have been several recently—but with regards, specifically, to the Delta/United Airlines proposed alliance, is that something that is particularly troubling to the Department of Transportation in some way?

Ms. MCFADDEN. Congressman, I can only say at this point, not knowing much in terms of the details of that alliance, that it is one that we have said warrants review. But I certainly couldn't comment further, and certainly wouldn't want to characterize, in any way, our view toward an alliance that we have not reviewed.

Mr. BARR. What is it about it, in so far as an airline alliance—a domestic airline alliance can mean something either very small or very large. What is it about this one that caught Transportation's interest? What is there—could you articulate what it is about it that is potentially problematic?

Ms. MCFADDEN. Again, Congressman, I wouldn't characterize it in any way, other than to say it is a proposed cooperative arrangement between two major carriers. And as such, we deem it as worthy of our review. We've asked for information from the carriers which they have indicated to us that they are very glad and very eager for us to have, to learn the details of their arrangement. But I wouldn't characterize it in any way.

Mr. BARR. Okay. In other words, the Department looks at this alliance the same way it would any other alliance, even a very relatively minor alliance that involves simply sharing of, or crediting of, Frequent Flier Miles. The Department of Transportation would look at that with the same scrutiny that they would this one, since there's no "articulatable" reason for the Department looking at this proposed alliance?

Ms. MCFADDEN. Congressman, there are three alliances that have been put on the table by our major carriers, and they will each get equal review by the Department of Transportation.

Mr. BARR. Would it be fair to say that the three of them are equally problematic or unproblematic to the Department?

Ms. MCFADDEN. Congressman, again, I would not want to, nor will I characterize them in any way. They will each receive equal review.

Mr. BARR. What I'm trying to get at is, is something that puts airlines on fair notices though, as to what the Department of Transportation is looking to, and with what degree of scrutiny they will look at these things. I really doubt that what you're saying is that the Department looks at every single alliance, no matter how small or large, with the same degree of scrutiny. Therefore, the Department must have some way of differentiating and prioritizing. After all, that's in large part what you do, and what Mr. Klein does, and what, we, in the Congress do, is prioritized. We can't look at every single thing that there is. I'm just trying to—and recognizing that the Department of Transportation doesn't have pre-approval responsibility in this area. Yet to some extent, what you seem to be saying is that it is exercising de facto, pre-approval in some way. And I'm just trying to, for our purpose of determining whether or not there's any legislative or authorization problem here, how does the Department of Transportation differentiate and prioritize in looking and using its resources to look at these aspects of airline activity which have been around for quite some time?

Ms. MCFADDEN. Congressman, let me say that there have been any number of, for example, code-sharing arrangements between a major carrier and commuter carrier that the Department has not looked at in detail or given close examination. But an alliance between two major carriers of the sort of any of the six that are before us, in terms of having announced alliances, we believe warrants our review. The nature of the alliance agreement, we are examining. We do not know the details, and so I wouldn't say it's pegged to the nature of the alliance agreement. We're examining those, and we're waiting for information from the carriers. But when we have announcements from the six major carriers of some sort of cooperative arrangements before them, we think it's our responsibility, at least, to take a look at what those alliance agreements entail and the competitive implications of them.

Mr. HYDE [presiding]. The gentleman's time has expired.

The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. Yes, thank you, Mr. Chairman. Let me just begin by saying I really want to commend Mr. Hyde for conducting these hearings, and I know he has others planned. And I think it's really crucial for many of the reasons that Mr. Klein articulated in his opening remarks. And I think that—let me just state that I want to share Mr. Conyers' mood. [Laughter.]

Here, in Congress—and I think all across the Nation—there really is an increasing discomfort and a mood of unease as to what is happening, because I think we're all a little overwhelmed. And I'm talking generally in terms of mergers and acquisitions, not specifically to what's happening in the airline industry, but every segment of the economy—I mean defense, financial services, health care, telecommunications. You know, we went through deregulation, and now we have what would seem to be a contrary trend in terms of the major players. And I certainly don't profess any expertise, but I am greatly disturbed by what I see. Mr. Klein, you referenced in your earlier remarks resources that are necessary. And I think that is a critical issue—and maybe this is the time to address it, given what we read this week in terms of the suit against Microsoft. I can just imagine what resources are going to be diverted to managing that suit. Let's be really clear about it: corporate America has resources that far exceed what I presume, Mr. Klein, you have at your disposal. We all—many of us practice law here; we know the game. You paper everything to death, and that clock is ticking. And I'm sure that there will be multiple major law firms that will have a very good couple of years, if not a decade or two, defending this suit in terms of their own gross revenues.

But what is your current funding for the Antitrust Division? And can you tell us, realistically, what do you need to really do the job in terms of your particular mandate given this absolute acceleration?

Mr. HYDE. Would the gentleman yield?

Mr. DELAHUNT. I yield to Mr. Hyde.

Mr. HYDE. I think—and I'll certainly leave it to Mr. Klein to answer—but you may be asking some very sensitive questions in view of the litigation that impends, and you may not really want them to know how strong or how not strong you are. [Laughter.]

Would you rather tell Mr. Delahunt the answers in private?

Mr. DELAHUNT. You can whisper in my ear, Mr. Klein—— [Laughter.]

Mr. DELAHUNT [continuing]. At some point in time. [Laughter.] I guess what I'm saying is——

Mr. HYDE. I don't want to create an awkward situation, but that might be proprietary.

Mr. DELAHUNT. Right.

Mr. KLEIN. I am totally comfortable. We are strong; we are ready, and we are prepared. The strength of one's lawsuit is not always measured by the size——

Mr. DELAHUNT. I understand that. I'm not talking about this particular lawsuit. What I'm talking about is, given what we see happening—I'm not just talking about technology. But I'm talking about every segment of the economy. And if we don't have the resources, not only are we going to be unable to find them in some book or manual, but we are not going to grasp the dimensions of the unintended consequences of what's happening.

Mr. KLEIN. No, I appreciate your question, Mr. Delahunt.

Mr. DELAHUNT. I want to advocate in your behalf, Mr. Klein, I want to get you more money.

Mr. KLEIN. I took that to be the point of your question. And I know that the chairman was simply trying to ask——

Mr. DELAHUNT. I understand that.

Mr. KLEIN [continuing]. The level that you were trying to get us to, and so I appreciate——

Mr. DELAHUNT. Well do you need seven times as much, given the information and the evidence solicited by Mr. Conyers in his testimony?

Mr. KLEIN. Well, obviously, the administration will have to make a request on behalf of the agency. But from my point of view, let me ask you a question, a couple—currently, our budget is approximately $95 million dollars for this Fiscal Year. Now, the first thing I should point out is that in criminal fines alone, we are bringing in really two, three, four times that much.

Mr. DELAHUNT. Is that coming back to the Division?

Mr. KLEIN. That is not coming back to us. That goes into Victims' Compensation Fund that Congress provided, though it's absolutely clear that the Antitrust Division of the Department of Justice is a true profit center for the United States Government. We bring in at least three or fours times what our budget is. Second, in all candor, we need a substantial—I'm not talking about a cost of living increase—we need a substantial increase, I predict over the next two, 3 years to be able to do the work that we are doing. I think if we will work with the administration and with Congress, I believe we will successfully on a bipartisan basis, get the agency to the level of increase that it prudently should be at. And without giving you a specific dollar amount, we are talking about certainly several millions of dollars. And I don't mean one or two.

Mr. HYDE. The gentleman's time has expired. Remind the gentleman of how secret we keep the CIA's budget. So, Mr. Klein, is very candid.

Mr. Hutchinson.

Mr. HUTCHINSON. Thank you, Mr. Chairman. And I also want to echo the sentiments that we appreciate you conducting this hearing. This is a very important area, and I want to take this opportunity to extend my appreciation to Mr. Klein for the work that he's doing in the Antitrust Division. I think the recent efforts that you have prevailed upon are excellent examples of aggressive enforcement of antitrust laws. And I think that's the way it should operate, and you are providing strong leadership in that. I also believe we need to properly provide resources to you so that you can fight these battles in a reasonable and confident way.

Ms. McFadden, I wanted to also share appreciation for the same aggressiveness in your department, although I have some questions that I want to ask you about. I read completely, the April 6th, 1998, statement, "The Department's Authority to Adopt This Statement of Enforcement Policy," which I believe is your argument that you really ought to have the latitude to have a different definition of predatory pricing that is not encompassed in the Antitrust Acts. And I read this, and I came across three arguments that you presented. And I really disagreed with them. And I just want to go through those and see if you would comment on those. And I might—if I have time—ask Mr. Klein, also, to comment on those.

First of all, you clearly provide a new direction for the definition of predatory pricing that does not use cost as a guideline. And you present three arguments for this new definition. I think you took three wrong turns. The first wrong turn was that your new definition ignores the existing guidelines and statements of the United States Supreme Court on predatory pricing. You know, they have adopted a definition that gives some rhyme and reason to our antitrust enforcement policy across the Nation. So, I think it's always dangerous when you go against the admonishment of the Supreme Court.

Secondly, I noticed a statement (as an old trial lawyer I read it with interest) that you have substantial experience, expertise, in airline economics. We should be able to administer a more complex test than the kind of test suitable for judges and jurors. And I guess that's the test under the Sherman Act and the Clayton Act. As a Federal prosecutor, I always believed that you could take a very complex case and simplify it for a juror and if you can't do that, you shouldn't bring that case into court. In a complex area such as antitrust, if it's a good case that violates common sense or that offends the marketplace, the jury can make the right decision. And I would rather put my trust in a judge or a jury than a regulatory environment. So, I think that's a wrong turn.

And the third wrong turn I think that you've taken, is that you really violate the direction of Congress. I mean, you're making a good, strong case here that Congress made it clear that you should go by, as the Justice Department does, the traditional definition of predatory pricing. You referred to, on page 6, the Senate committee explained, "It is the expressed intention of the committee that the board not utilize," and of course this is what you all adopted that authority—"not utilize its power to use the rubric of predatory defined lower fares, unlawfulness if such low fares are truly predatory." And so, those are three wrong turns.

I think you ignored the Supreme Court. You're saying that regulations work better than a judge and a jury. And thirdly, you are saying that Congress didn't have a wise course when they gave an admonition to your Department. And so I'm concerned about this new direction. I believe in tough antitrust enforcement, but the Department of Justice seems a good means to do that.

So do you want to comment? And I would like Mr. Klein, if he could briefly comment with the chair's indulgence.

Ms. McFADDEN. Thank you, Congressman. Let me answer your concerns this way. First of all, as has been noted earlier, in developing our competition policy and in looking at our authority to issue this proposed policy, we worked closely with the Justice Department. And I'll let Mr. Klein speak to that. But we see this proposed policy as complementary to antitrust enforcement by the Justice Department, and not counter to or inconsistent with it. It is true that the policy defines anti-competitive or unfair exclusionary conduct in a way that is not completely consistent with the use of a cost standard under traditional antitrust analysis.

Although in working with the Justice Department, it is very clear that the policy is based upon the same principle that animates antitrust law. We believe that our statutory authority to prohibit unfair methods of competition very clearly anticipates—and in fact specifically anticipates—that the Department of Transportation's authority, with respect to the aviation industry, is in fact different from and perhaps broader than the Justice Department's authority.

And, in fact, in looking at the way that Congress gave us the statutory authority to protect against unfair methods of competition, and you look at the legislative history, it is very clear that when Congress chose wisely to deregulate the aviation industry, it nonetheless maintained that the Department of Transportation must still have the authority to protect against unfair methods of competition. And if you look——

Mr. HUTCHINSON. By regulation are you not undermining what Congress intended?

Ms. McFADDEN. Mr. Congressman, we don't think so. We think that the legislative history and our statutory power indicate clearly, in fact, what Congress intended. I should also say that our policy anticipates the use of an enforcement proceeding that would use an administrative law judge. I didn't catch the entire line that you quoted, but we certainly believe that our policy should be enforced by a system that is based upon an oral evidentiary hearing before an administrative law judge. We believe that our statutory authority is consistent with what Congress foresaw. That in a deregulated environment, it was important to make sure that the aviation industry maintained its competitiveness. And that in addition to the antitrust enforcement by the Justice Department, that the Department of Transportation had a role as well.

Mr. HYDE. The gentleman's time has expired.

The gentleman from Indiana, Mr Pease.

Mr. PEASE. Thank you, Mr. Chairman. I wanted to follow up, Ms. McFadden, on some of the questioning that Congressman Berman began. And that was trying to define predatory, and determining what is the line between tough competition like meeting a competitor's prices and predatory practices. I thought I understood you to say that it took more than meeting a competitor's prices before the Department would consider the practice to be predatory. Can you go into that in a bit greater detail, please?

Ms. MCFADDEN. Yes, Congressman. Our competition policy anticipates that, in response to new entry into a market, if a major carrier, an established carrier, were to pursue a strategy of both price cuts and substantial increases, to such an extent that in looking at that competitive response it can't be explained in any other way than that it was designed to eliminate the competition from that market entirely, we would consider that unlawful.

Mr. PEASE. Would your analysis be the same if it was not a new entry carrier, if it was an established carrier that was doing the same things?

Ms. MCFADDEN. Congressman, we have written the policy to reflect what we have seen in the marketplace. And we have seen responses by major carriers to new entrant carriers. Of course, our authority to protect against unfair methods of competition applies to anyone. And so if we saw a problem involving any kind of combination of carriers that we thought warranted attention, we would, of course, pursue that.

Mr. PEASE. Okay. But your guidelines that you've established seem to be oriented toward new entrants. Am I reading that correctly?

Ms. MCFADDEN. That's correct, Congressman.

Mr. PEASE. And that's only because of what you've seen so far?

Ms. MCFADDEN. That's because that's the problem that we have identified.

Mr. PEASE. Okay. Without going into the specifics of any of the matters that are pending before you, because you made it very clear in response to other questions that you weren't going to respond to that. Is there an hierarchy of concerns about practices that trigger the Department's attention more quickly? For instance, if all we do is share a Frequent Flier program, is that lower on the hierarchy than code sharing? Or, do you use it the totality of the circumstances review and don't have a hierarchy of concerns?

Ms. MCFADDEN. I think in general, Congressman, that it really does warrant examination on the specific facts and the specific details of each arrangement. I think, in general, an arrangement that involves some kind of shift of ownership clearly has more implications than one that just has a sharing of a Frequent Flier program. But we really do examine each on its individual facts and merits.

Mr. PEASE. Okay. Thank you. I don't know if this should be directed to either—which or both of you. I understand that the Justice Department—or that the Department of Transportation looks at domestic alliances after the fact, and international alliances before the fact. Is that correct? Is the standard for review the same in both cases—just the timing different? Or is there a difference in standard of review as well?

Ms. MCFADDEN. Well the difference, in terms of our authority with respect to international alliances and domestic alliances, can be explained because we must approve carriers having international route authority. While, of course, in the domestic arena, all U.S. carriers have the authority to fly to all domestic points.

That's the difference in our authority to review international alliances versus domestic. In terms of the timing, again, we are conducting reviews of those alliances that have been announced. And not waiting, we've asked the carriers for information. But as I said, the Justice Department has the primary jurisdiction over those domestic alliances.

Mr. PEASE. Mr. Klein, that same question to you.

Mr. KLEIN. Yes, I think there are a couple of key differences. Obviously, in the international arena, one of the problems which the Department of Transportation deals with is the whole issue of Open Skies, access to foreign country airports, and so forth, which is not a domestic issue.

And the second difference is the one that Ms. McFadden referred to and that is, of course, there are all sorts of restrictions on what foreign carriers can do domestically here and visa versa, so the potential competition issues are entirely different. But that does lead to a point that you raised about new entrants versus established carriers. As a practical matter, established carriers are less likely to invade each other's territories, for all the obvious reasons. They have a reticulated network that they've developed. And that kind of moving into each other's areas is usually less favored than a new entrant that might see an opportunity to come into a hub where there is very little current competition. And so that could affect why the policy would focus on, but not be conceptually limited to, new entrants.

Mr. PEASE. Thank you.

Mr. HYDE. The gentleman's time has expired. And I'm very reluctant to let you both go, but we have another panel, and we want to accommodate them as well as hear what they have to say.

But before you leave, I would like to ask two rhetorical questions. In other words, I don't expect answers, but I'd like you both to think about it. And if it occurs to you, and you get time, to drop me a line with these answers, I'd like to have it.

The first one is, what existing capacity is available at O'Hare to allow the entry of significant new competition into the Chicago market? And that same question might apply to Atlanta, New York, and Washington. D.C.

And the other question is, why is there no major—and I stress major—competition for Delta in Atlanta, Northwest at Detroit and Minneapolis, United and American at Chicago? In other words, why have the other majors stayed away? I know that Delta's into Chicago, but in a very minor way. Those are questions that I'd like the answers to, but I don't solicit them today.

Mr. DELAHUNT. Mr. Chairman, I'm over here. Could you amend that to——

Mr. HYDE. You want Logan Airport in there?

Mr. DELAHUNT. I want Logan Airport. And I'd like to hear about USAir in Washington, D.C.

Mr. HYDE. Well, my request is so amended. [Laughter.]

Thank you.

Thank you both very much for very helpful testimony, and your willingness to come in and be so candid with us.

Ms. MCFADDEN. Thank you, Mr. Chairman. I know my colleagues from the Department of Transportation are chagrined that

I have not figured out a way to get the committee to talk about resources of the Department of Transportation. [Laughter.]

Mr. HYDE. Be happy with the status quo. [Laughter.]

Mr. KLEIN. You did get him to talk about the CIA, though. [Laughter.]

Mr. DELAHUNT. This is the Judiciary Committee, Ms. McFadden. [Laughter.]

Mr. HYDE. Thank you.

Well, our second panel consists of representation from industry and other interested groups. And they will give a wide variety of perspectives on airline competition.

And our first witness is Mr. Henry Joyner, vice president of Marketing and Planning for American Airlines. Mr. Joyner is a graduate of Louisiana State University, has two master's degrees from the University of Chicago, one in business administration and one in Far Eastern languages. Mr. Joyner has been with American in a variety of positions since his graduation in 1980 and began his current position in June 1990.

Next we have Mr. Scott Yohe, the senior vice president for Government Affairs, for Delta Airlines. Mr. Yohe is a graduate of George Washington University and served a tour with former Representative John Flynt before beginning with Delta in 1978. He's been there ever since and was promoted to his current position in 1996.

Our next witness is Mr. Elliott Seiden, the vice president for Law and Government Affairs for Northwest Airlines. He is a graduate of New York University and its law school. He has served tours with the Civil Aeronautics Board, the Antitrust Division, and Continental Airlines before joining Northwest in 1990. And he has been with Northwest since then.

Our next witness is Mr. Kevin Mitchell, chairman of the Business Travel Coalition. Mr. Mitchell formed the coalition in 1996 to represent the interests of the business buyers of airline tickets. His organization has sponsored two national airline competition summits. And he has testified in numerous public forums about airline competition.

And next we have Mr. Mark Kahan, the vice chairman and chief operating officer of Spirit Airlines. Mr. Kahan is a graduate of Columbia University and its law school, has served with the New York Public Service Commission, the Department of Energy, and the Civil Aeronautics Board. He's been a professor, a practicing lawyer, and an airline executive. He took his current position at Spirit in 1996, and he appears here today on behalf of the Air Carrier Association of America.

And our next witness is Mr. Paul Hudson, executive director of the Aviation Consumer Action Project. Mr. Hudson is a graduate of the University of Michigan and the Cleveland Marshall College of Law. He's worked as general counsel to the New York State Crime Victims Board. He also worked extensively on various advisory committees to the Federal Aviation Administration and has been engaged in private practice of law in New York.

Finally, we have my very good friend, Mr. Joe Karaganis, a partner in the law firm of Karaganis and White. He's a graduate of the University of Chicago Law School. He clerked for U.S. District

Judge Hubert Will. He has been in private practice since 1968 and has extensive expertise in environmental and aviation law. He appears here today on behalf of the Suburban O'Hare Commission.

We welcome all of you, and we really look forward to your testimony. Let me also ask, and it's just a request, that you try to limit your remarks to 5 minutes. The full text of your statements will be included in the record. And they will be read, I can assure you. But because of time constraints, it would be useful and helpful if you could abbreviate your remarks. Thank you.

Mr. Joyner.

STATEMENT OF HENRY C. JOYNER, VICE PRESIDENT FOR MARKETING AND PLANNING, AMERICAN AIRLINES, INC., DFW INTERNATIONAL AIRPORT, TEXAS

Mr. JOYNER. Thank you, Chairman Hyde, Mr. Conyers, and the members of the committee. I commend you, Mr. Chairman, and your committee colleagues for taking up the task of examining the implications of the domestic airline alliances and mergers such as those proposed by several of our competitors.

My statement today will focus on the recently announced agreement between American Airlines and U.S. Airways. In addition to describing the terms of our agreement, the central message I want to leave with you and your committee is that our agreement is not comparable to the more expansive combinations pursued by our competitors. Northwest Airlines has proposed a merger with Continental Airlines through the purchase of controlling interest in Continental's voting stock, while United and Delta intend to combine their global networks through extensive code sharing and coordinated operations.

In contrast, in the American Airlines/U.S. Airways agreement, nothing gets merged except our customers' AAdvantage and U.S. Airways Dividend Frequent Flier miles. And all we intend to share is our airport lounges, not airline codes around the world.

Despite the media's tendency to characterize all of the agreements represented here today as something dramatic and a step toward industry consolidation, the fact is that our marketing agreement with U.S. Airways is not comparable at all to those other transactions, either in scope or potential effect on competition within the airline industry.

Our agreement with U.S. Airways has three basic elements. First, the central feature of the agreement is the linkage between Americans' Frequent Flier program, AAdvantage, and the U.S. Airways Dividend Miles program. Members of both programs will enjoy grater choices for award destinations as a result of this partnership. A U.S. Dividend member living in Philadelphia can now claim an award that he couldn't claim before to Hawaii. An American AAdvantage member living in Buffalo can now take an award trip on U.S. Airways to Orlando, Florida.

Additionally, there's a new, unique feature of this linkage that will allow customers who participate in both programs to combine their AAdvantage and Dividend Miles and redeem them for free travel on either airline, anywhere either airline flies. For example, if one of our customers has earned 15,000 miles in AAdvantage and 10,000 miles in the U.S. Airways Dividend Miles program, he or she may combine those miles to receive a free ticket on either American or U.S. Airways. The plan is unique because it allows customers to combine miles in the two programs rather than forcing them to choose to concentrate mileage earning in either one. Thus, the two programs remain separate, independent, and competitive. Generally, passengers will not be able to earn miles on one program when flying on the other airline.

American and U.S. Airways will maintain the incentive to compete with one another in all respects. It's important to note that under this marketing agreement, American receives nothing if a passenger chooses to fly on U.S. Airways.

Now, a moment ago I said, generally, customers do not receive miles in one Frequent Flyer program when flying on the other airline. The one exception is that American wants to entice U.S. Airways' Shuttle passengers to travel on American when their travel plans require service other than between Washington, D.C., New York, and Boston. Accordingly, American has provided U.S. Airways with a bank of AAdvantage miles that may be awarded to Shuttle passengers in addition to U.S. Airways Dividend miles. By offering them AAdvantage miles, we hope those Shuttle passengers will choose American when their travel plans involve American's other domestic and international destinations.

Second, American Airlines and U.S. Airways have agreed to expand the benefit of Admirals Club and U.S. Airways Club memberships by allowing reciprocal access to our airport lounges. That means that the Admirals Club members will have access to a number of other clubs not available today.

Third, we are discussing with U.S. Airways a limited code-sharing partnership involving only American Eagle, the commuter affiliate for American Airlines and U.S. Airways Express. These discussions are continuing, and we've not agreed on what routes may be involved. And I want to emphasize that there is no current plan to engage in code sharing on any of our jet operations.

It's important to recognize what the American Airlines/U.S. Airways agreement does not do, in order to make clear the contrast with the other combinations that have been announced. The agreement between American Airlines and U.S. Airways does none of the following:

It does not involve extensive code sharing. It does not include any equity or stock ownership transfer. It does not allow either airline to exert control or influence over the operations of the other. It does not require coordination between American and U.S. Airways of schedules, frequency, or selection of routes. It does not have the slightest effect of diminishing competition between our two airlines on any route, anywhere. And finally, because it involves only a limited pro-competitive linkage of our Frequent Flier programs offering significant new consumer benefits, our agreement with U.S. Airways does not require prior approval by either the Department of Transportation or the Justice Department.

I should add, however, that as stated before, both agencies have made routine inquires to ensure they fully understand the scope of our agreement. And we are cooperating with those requests.

In brief summary, we believe that real consumer benefits can be created through much more modest endeavors such as our marketing agreement with U.S. Airways. Nevertheless, we've positioned ourselves to remain competitive if the policy decisions of our Government permit our competitors to expand those relationships. And if we must form a more extensive domestic alliance to maintain our competitive stature, we will do so.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Joyner follows:]

PREPARED STATEMENT OF HENRY C. JOYNER, VICE PRESIDENT FOR MARKETING AND PLANNING, AMERICAN AIRLINES, INC., DFW INTERNATIONAL AIRPORT, TEXAS

Thank you Chairman Hyde, Mr. Conyers and other Members for the opportunity to address this Committee. I commend you, Mr. Chairman, and your Committee colleagues for taking up the critical task of examining the implications of domestic airline alliances and mergers such as those proposed by several of our competitors.

My statement today will focus on the recently announced agreement between American Airlines and US Airways. In addition to describing the terms of our agreement, the central message I want to leave with this Committee is that our agreement is not comparable to the expansive combinations pursued by our competitors. Northwest Airlines has proposed a merger with Continental Airlines through the purchase of a controlling interest in Continental's voting stock, while United Air Lines and Delta Air Lines intend to combine their global networks through extensive codesharing and coordinated operations. In contrast, in the American Airlines/US Airways agreement, nothing gets merged except our customers' AAdvantage and Dividend frequent flyer miles. And all we intend to share is airport lounges—not airline codes around the world. Despite the media's tendency to characterize all three agreements as essentially the same—that is, as dramatic steps toward industry consolidation—the fact is that our marketing agreement with US Airways is not comparable to those other transactions either in scope or in its potential effect on competition within the airline industry.

Our agreement with US Airways has three basic elements:

First, the central feature of our agreement is the linkage between American Airlines' AAdvantage frequent flyer program and the US Airways Dividend Miles program. Members of both programs will enjoy greater choices for award destinations as a result of this partnership. A US Airways Dividend Miles member from Philadelphia can now claim a travel award to Hawaii on American, and an American AAdvantage member from Buffalo can take an award trip to Orlando on US Airways. Additionally, a new, unique feature of this linkage will allow customers who participate in both frequent flyer programs to combine their AAdvantage and Dividend Miles and redeem them for free travel on either airline, anywhere either airline flies. For example, if one of our customers has earned 15,000 miles in the AAdvantage program and 10,000 miles in the Dividend Miles program, he or she may combine those miles to receive a free ticket on either American Airlines or US Airways. This plan is unique because it allows customers to combine miles in the two programs, rather than forcing them to choose to concentrate mileage earnings in one program or the other. Thus, the two programs remain separate, independent and competitive. Generally, passengers will not be able to earn miles on one program when flying on the other airline.

American and US Airways will maintain the incentive to compete with one another in all respects. It is important to note that, under this marketing agreement, American receives nothing if the passenger chooses to fly on US Airways.

A moment ago, I said "generally" customers do not receive miles in one frequent flyer program when flying on the other airline. The one exception is that American wants to entice US Airways' Shuttle passengers to travel on American when their travel plans require service other than between Washington, D.C. and New York and Boston. Accordingly, American has provided US Airways with a bank of AAdvantage miles that may be awarded to Shuttle passengers in addition to US Airways Dividend Miles. By offering them AAdvantage miles, we hope Shuttle passengers will choose American when their travel plans involve American's other domestic and international destinations.

Second, American Airlines and US Airways have agreed to expand the benefits of Admirals Club and US Airways Club memberships by allowing reciprocal access to our airport lounges. This means that Admirals Club members will also have access to US Airways Clubs at 12 airports without Admirals Clubs. Conversely, US Airways Club members gain access to 35 Admirals Clubs at airports currently without US Airways Club.

Third, we are discussing with US Airways very limited codesharing involving only American Eagle, the commuter airline for American Airlines, and US Airways Express. These discussions are continuing and we have not yet agreed on which routes may be involved. I must emphasize that there is no current plan to engage in codesharing on any of our jet operations.

It is important to recognize what the American Airlines/US Airways agreement does *not* do in order to make clear the contrast with the other combinations that have been announced. The agreement between American Airlines and US Airways does none of the following:

- It does not involve extensive codesharing
- It does not include any equity or stock ownership transfer
- It does not allow either airline to exert any control or influence over the operations of the other
- It does not require coordination between American and US Airways of schedules, frequency or selection of routes
- It does not have the slightest effect of diminishing competition between our two airlines on any route, anywhere, and finally
- Because it involves only a limited procompetitive linkage of our frequent flyer programs offering significant new consumer benefits, our agreement with US Airways does not require prior approval by either the Department of Transportation or the Department of Justice.

I should add, however, that both agencies have made routine inquiries to ensure they understand fully the scope of our agreement, and we are cooperating with those requests.

In summary, we believe that real consumer benefits can be created through much more modest endeavors, such as our marketing agreement with US Airways, that do not diminish the incentive to compete. Nevertheless, we have positioned our company to remain competitive if the policy decisions of our government permit our competitors to expand their route networks by broad codesharing and consolidation. Our agreement with US Airways is flexible and potentially very robust. If we must form more extensive domestic alliances to maintain our competitive stature and ensure our future growth, we can and we will.

In the end, what we seek most are clear policy decisions, consistently applied and enforced. With that, we are confident that American will compete successfully in the years to come. Thank you for your kind attention.

Mr. HYDE. Thank you, Mr. Joyner.

Mr. Yohe.

STATEMENT OF SCOTT YOHE, SENIOR VICE PRESIDENT FOR GOVERNMENT AFFAIRS, DELTA AIRLINES, INC., WASHINGTON, DC

Mr. YOHE. Thank you, Mr. Chairman, Mr. Conyers, members of the committee. Delta appreciates this opportunity to appear before you today to address the issue of competition in the airline industry, and to talk about airline alliances, specifically, our alliance with United Airlines. Given the current debate about airline competition and airline alliances, this forum is certainly welcome and very timely. I've submitted a more lengthy statement for the record, and I'll summarize from those remarks.

I'd like to briefly discuss the Department of Transportation's predatory pricing guidelines, and then review the Delta/United strategic marketing alliance.

The Department of Transportation's proposed policy on predatory practices is, contrary to their assertions, a broad and pervasive regulatory scheme that will have a fundamental impact on how Delta and other carriers can price and market their product. It's a misguided effort to protect a certain class of airlines from the rigors of the competitive marketplace. It will have the unfortunate consequence of reducing price competition. In our judgement, consumers and communities will be the ultimate losers.

Our initial analysis suggests that many of the triggering thresholds are so low that numerous markets, where we have competed for many years with new entrant carriers, will lose tens of thousands of low-fare seats because we might be in violation of the Department's proposed guidelines. This attempt to regulate airline price behavior should be rejected, or at a minimum, deferred until Congress, the industry, and the traveling public have had an ample opportunity to more thoroughly understand the impact this policy will have on competition and consumer choice. And I was pleased to hear Ms. McFadden indicate earlier that they had extended the deadline. That's a welcome development.

Let me now turn to the recently announced alliance between Delta and United. Mr. Chairman, this alliance is the latest example of the changes that are transforming our industry in direct response to the demands of our customers. Today airline passengers, especially business travelers, are demanding the ability to conduct seamless global commercial transactions and to serve their customers around the world. Delta's alliance with United is a cooperative venture that will advance the customer-driven trend toward global transportation networks. Unfortunately, there has been a lot of mischaracterization about this alliance. Let me explain to you how it will work.

Delta and United will link their complimentary route networks through code-sharing arrangements, reciprocal Frequent Flier programs, and other limited marketing cooperative efforts. There currently is only a 7-percent overlap of the two domestic networks. Delta will place its code on United's domestic route network. Every United flight in the U.S. will also carry the Delta code. Delta will be able to market and sell seats on any one of these flights. And United will be able to do the same thing on the Delta system. This venture ensures that both—will enable both companies to strength and grow their respective network operations. We do not plan to reduce services. This alliance is about growth, not contraction.

Domestic competition will be enhanced as new competitive flight options will be added to each of the 13 U.S. Delta and United hub and gateway cities. And new nonstop price competition is introduced on over 4,600 daily flights in 543 U.S. city pairs.

Each airline will remain independent and continue to compete with one another. Most importantly, there will be no coordination on pricing. United will be able to sell seats on Delta at whatever price they deem appropriate consistent with market conditions. And Delta will do the same on United. The two carriers will remain price competitive.

Contrary to the characterizations of some observers, this alliance will not lead to greater industry concentration. It is not a combination of number one and number three. We have absolutely no plans to merge. And it is not a virtual merger, because we are not seeking antitrust immunity.

Mr. Chairman, we believe a major beneficiary to this proposed alliance is medium and small-sized communities. For example, customers in 56 such communities will now have an additional carrier choice as a result of this code share. Passengers in those communities will have a wide array of price and service options. This alliance is structured in a way to ensure that each carrier is only rewarded if they compete successfully to attract new and additional customers. This will preserve the incentive for competition between the two airlines because revenue from a travel itinerary will go to the airline that actually flies the passenger. Since we're not sharing revenues or coordinating prices, each carrier must be vigilant to remain competitive in every market we serve.

This alliance will also create opportunities for job growth and enhance security for our employees. I want to strongly emphasize that no work force reductions will occur. And we think job expansions will take place.

Mr. Chairman, the Department of Transportation, Department of Justice, and General Accounting Office have all judged alliances to be in the public interest. And we agree. By almost any measure, alliances have been hugely successful for consumers, communities, and airlines. Their formation has not dampened competition, but has rather heightened it. Consumers now enjoy more flights from more carriers to more cites than ever before.

We're convinced that any opened-minded review of Delta/United alliance will conclude that it produces pro-competitive benefits for the traveling public.

Mr. Chairman, I'm grateful for the opportunity to present our views. And I look forward to answering your questions.

[The prepared statement of Mr. Yohe follows:]

PREPARED STATEMENT OF SCOTT YOHE, SENIOR VICE PRESIDENT FOR GOVERNMENT AFFAIRS, DELTA AIRLINES, INC., WASHINGTON, DC

Delta appreciates this opportunity to appear before this Committee and address competition in the airline industry and airline alliances. Given the importance of these issues and the current debate about airline competition, this forum is both timely and welcome.

Talk of airline alliances and airline competition has dominated the media coverage of airlines. Why all of the attention? Why are governmental bodies so interested in this? The answer is simple—the formation of alliances is rapidly changing the airline business as we know it. Alliances have taken cooperation to a new level. They are redefining the terms upon which airlines compete with one another.

What we are engaged in is nothing short of a major transformation of the industry. It is occurring in direct response to the demands of our customers. By forming these alliances we are responding to the needs of the marketplace. In turn, we are creating global networks that give hundreds of communities fast and efficient access to international commerce.

Mr. Chairman, today I would like to briefly address three key issues being considered in the context of alliances:

- How alliances are critical to industry growth and development
- How alliances benefit consumers
- The different forms alliances can take and a review of the Delta-United code share alliance

I will then comment briefly on the continued critical role of government in fostering pro-competitive alliances.

But first, I would like to briefly review the benefits of airline deregulation and the state of competition in the industry. In addition, I will also touch on the recent release of pricing "guidelines" by the DOT.

DEREGULATION HAS BEEN A SUCCESS AND CONTINUES TO BENEFIT CONSUMERS

Deregulation of the airline industry has spawned tremendous innovation, especially in terms of increased accessibility to air travel, a wider range of products/services and the development of customer-oriented programs.

Air travel is now an available and affordable travel option for most of the American public. During the infancy of the aviation industry, only the very affluent could afford airline tickets. The increased affordability of air travel today has had a direct impact on the number of people flying today. In fact, 325 million more people flew in 1997 (600 million) than in 1978 (275 million).

Mr. Chairman, between 1978 and 1996, air fares increased at less than half the rate of inflation (+ 57% versus +141% for the CPI). In other words, using inflation-adjusted dollars, it was 37% less expensive to fly in 1996 than in 1978. *If other consumer products applied the same formula, a loaf of bread would cost 59 cents (versus $1.79), a half-gallon of milk $1.37 (versus $2.50) and bananas would cost just 43 cents/pound (versus 79 cents/pound) in today's dollars.*

In addition, the number of airlines in the U.S. market has increased dramatically since 1978. In 1997, 95 airlines competed to provide air travel services to the flying public. In 1978, only 39 airlines provided these services.

Today, the airline industry is able to offer a variety of airline and fare products to meet growing consumer needs. Delta offers three airline products: mainline Delta, the Delta Shuttle and Delta Express (Delta's low fare brand to Florida). In 1997, more than 103 million customers flew on Delta airplanes.

Today, airlines offer a wide range of full and discounted fare products to meet customer's specific travel needs.

Leisure fares typically offer substantial pricing discounts in exchange for a customer's willingness to travel under certain restrictive conditions e.g. Saturday night stay, booking up to three weeks in advance and flying on certain days and during certain times of the day.

Unrestricted business fares, although typically priced higher than leisure fares, provide business travelers with seats on demand (often at the last minute) and the flexibility required (e.g. make changes to the travel itinerary or get refunds without penalty) to meet their dynamic travel needs.

Mr. Chairman, I want to stress that in 1997 approximately 90% of Delta's customers received some type of discount on their air travel.

DOT PROPOSED PRICING GUIDELINES WILL CHILL COMPETITION AND ELIMINATE MANY LOW FARE OPTIONS FOR CONSUMERS

Let me turn now to the Department's proposed policy on predatory practices. This policy is a prime example of the government trying to kill a mosquito with a sledge hammer. It is a misguided effort to protect a certain class of airlines from the rigors of the competitive marketplace. It will protect competitors, not competition and have the unfortunate consequence of reducing price competition. Consumers and communities will be the ultimate losers.

The proposed policy will have a pervasive impact on how Delta and other network carriers can price and market their product. The guidelines establish broad criteria for price matching that effectively prevent low fare competition.

There is a real disconnect between the stated purpose of the policy and the proposed standards. DOT's intent is to provide clear "guidelines", but the policy is so vague and undefined it offers no guidelines. DOT's purpose is to address only "the more extreme" predatory responses, however, it fails to accomplish this objective because the triggering thresholds are so low, that they will capture virtually every competitive response by a major carrier. The proposal will produce the opposite of its intended effect, by inhibiting competition and depriving consumers of low fares. As a result, the competition envisioned by the Airline Deregulation Act will be blunted and consumers will lose. Here are a few examples of the adverse impacts.

First, because of the fear of violations and civil penalties, the policy will inhibit low fare initiatives by major airlines. The loss of low fare seats will be pervasive. It will affect tens of millions of airline passengers at large, mid-sized and small communities throughout the country. Let me highlight Delta's experience in one city pair to demonstrate the huge impact this policy would have on the traveling public. When ValuJet initiated service between Atlanta and Ft. Lauderdale, Delta initially believed that it did not need to match ValuJet's fares and could rely on its service and other advantages. That initial strategy did not work; Delta lost substantial numbers of passengers. Delta then matched ValuJet's fares and passengers on *both carriers* increased dramatically. Consumers benefited by low fares and both carriers flourished. If the DOT's policy were in place at the time, Delta might not have been willing to risk enforcement exposure, thus denying hundreds of thousands of customers low fare seats. This is one example on one route which can be replicated at cities across the country.

Second, the impact on low fares will go beyond merely preventing major carriers from matching fares since it could affect existing discount programs such as senior citizens discounts, companion fares, kids-fly-free fares, government discounts, etc.

Third, the impact on small and mid-sized cities will be most severe. Consumers from such cities will not only lose low fare options, but they could face significant service reductions and even outright service termination by the major carriers if the carrier is unable to match the new entrant's fares. If the major carrier cannot respond effectively to low fares, it could lose enough traffic and revenue to make continued service to the city uneconomical. If it determines to deploy its resources elsewhere, the community would be deprived entirely of the carrier's broad global network.

DOT's proposed policy ignores the painstaking efforts that Delta and other carriers made to reinvent themselves and become highly efficient low cost operators. Delta's successful cost reduction program made it one of the most efficient, low cost carriers in the world. These increases in productivity and efficiency came with significant economic and personal sacrifice to the company and its work force. Delta is as efficient, if not more efficient, than most of the carriers with which it competes, including the new entrants. Consumers must not be deprived of these low fare benefits on the basis of a misdirected policy to protect a small cadre of niche airlines.

ALLIANCES ARE CRITICAL TO INDUSTRY GROWTH AND DEVELOPMENT

Mr. Chairman, the competitive marketplace in aviation has changed dramatically in the past decade. Airlines must change and respond to this globalized economy. As our economy has grown more and more global in scale, U.S. passengers and shippers are now demanding access to destinations we never imagined flying. They want to go from anywhere to everywhere.

Within the past few years, the airline industry has begun to restructure itself to respond to the globalization of every element of our economy. Today, businesses and business travelers are demanding the ability to conduct seamless, global commercial transactions to serve their customers around the world. Every industry, including the airlines, has had to respond to this demand for more convenient access to the global marketplace.

In order to compete in the global race, we have had to change the way we do business and meet the demands of our customers for fast, convenient access to destinations throughout the U.S. and the world. Yet, responding to these changes in a traditional fashion was just too expensive. With the price of modern aircraft pushing $150 million, carriers could not afford to devote resources to thin, untested international markets. The losses we experienced in the early 1990s—especially in the international arena—made carriers extremely adverse to risky international expansion. Yet, knowing we had to respond to these changes, we devised a different approach.

The answer has been international alliances. Carriers have sought partners with strategically well-positioned international hubs. These hubs provide vast connecting complexes enabling passengers to conveniently connect to flights to a number of destinations. Each partner then takes advantage of the other's route networks by building "bridges" between the hubs. These "bridges" take the form of long-haul, intercontinental flights. Ideally, the result is seamless cooperation that allows customers to gain access to a vast new network created by the partner.

Airlines, including Delta, offer "seamless" transportation around the globe through marketing alliances and code share relationships with domestic commuter/regional air carriers, international air carriers and other domestic airlines.

This seamlessness is created in a number of ways, most prominently through code sharing and joint frequent flyer programs. Through code sharing, airlines are able to place their codes on the networks of their partners, thereby greatly expanding the reach of their route network without a major capital investment. It has proven extremely effective thus far in meeting the needs of growing demand for both domestic and international travel.

Competing networks are now forming that will link U.S. carriers with partners from Europe, Asia and Latin America. As these systems have grown, passengers and communities are enjoying convenient access to networks that will be able to get them to their destination in the most efficient manner possible.

From an airline perspective, these alliances provide an opportunity for growth. Delta's alliance partners have allowed us to put "our product" on the shelf in 70 international cities. This generated over $100 million in incremental revenue growth last year. Employees, shareholders and suppliers have all benefited from this contribution.

Unfortunately, recent public attention on alliances has, once again, failed to adequately define and distinguish the different types of cooperation prevalent in the industry. This is essential in any evaluation of the public interest benefits.

As previously mentioned, code sharing is the foundation for most alliances. Airlines place their code on the flights of another carrier, selling and marketing the service as their own. Code sharing can, however, take on decidedly different forms. The two types of code sharing alliances in existence achieve different commercial purposes. However, they both provide important consumer and public benefits.

DEFINING CODE SHARING ALLIANCES

A. *Code Sharing without Antitrust Immunity*—This usually involves one carrier purchasing seats on another carrier. The marketing carrier then sells the seats to the general public as its own. The two carriers separately market and sell the inventory they possess on each flight. There is no price coordination between the carriers. In fact, carriers are forced to compete with one another to fill the inventory for which they have bargained. Northwest and Alaska Airlines have been doing this as have Continental and America West. Delta does this with a number of its international partners including Malev Hungarian Airlines, Aer Lingus, TAP Air Portugal, Korean Airlines and Transbrasil.

We also practice this form of code sharing with our regional U.S. partners—Atlantic Southeast, Comair, SkyWest, Trans States and Business Express. When we sell a ticket on one of these Delta Connection carriers, we pay an established fee we have negotiated with that carrier for each passenger that is flown under the Delta code. This type of relationship allows us to expand our route network without the intensive capital investment of acquiring a new airline. It also provides the benefits of easy network access to a number of small and mid-sized communities.

We have recently seen announcements that Northwest and Continental and American and US Airways intend to form similar domestic code share alliances. These proposed domestic alliances emphasize the independence of their respective organizations and their plans to continue to vigorously compete against each other in the marketplace. This new type of domestic code sharing between major airlines is an innovative marketing step. It benefits consumers as well as the carriers. While each must be looked at on an individual basis, the formation of this type of alliance is designed to expand consumers' access to the global marketplace.

B. *Code Sharing with Antitrust Immunity*—U.S. carriers are currently utilizing this type of code sharing on certain international routes. Given restrictions on foreign ownership and control of airlines, carriers are not allowed to merge with their international partners. By granting antitrust immunity, the Department of Transportation has adopted a policy that allows U.S. carriers and their international partners to operate as if they were a single carrier. Under this scenario, carriers are allowed to coordinate such disciplines as pricing, scheduling, sales and marketing. This type of relationship presents the best profit dynamic as carriers are coordinating their efforts rather than competing directly.

The network benefits of these alliances must outweigh the potential loss of competition to receive DOT and DOJ conferrence of antitrust immunity. That is the problem with the American Airlines-British Airways and American-TACA alliances. In both cases, the network benefits do not overcome the damage to competition in the U.S.-London and relevant U.S.-Central American city-pair markets.

The U.S. Government has permitted and encouraged the development of airline code share alliances because they produce invaluable public and consumer benefits.

ALLIANCES ARE PRODUCING REAL BENEFITS FOR CONSUMERS

Airline customers are the driving force for the creation of alliances. Travelers and shippers want seamless access to air travel with a minimum of hassle at competitive prices.

As an unabashed supporter of pro-competitive airline alliances, Delta can speak firsthand about how these alliances have helped us to create the global network that we are building today.

Regional Partners

Our Delta Connection partners Atlantic Southeast, Comair, Trans States, SkyWest and Business Express provide, safe, reliable and convenient service to hundreds of communities around the country. We have worked with these regional carriers to ensure that our schedules are coordinated to allow passengers to enjoy a seamless travel experience of single check-in for their ticketing and baggage needs.

Delta's Connection partners are separate companies, owned and operated independently from Delta.[1]

International Partners

In the international arena, we currently operate to 7 countries with our partner airlines AeroMexico, Transbrasil, Korean Airlines, Malev Hungarian Airlines, Aer Lingus, TAP Air Portugal and Finnair. We just received DOT approval to begin a comprehensive code share partnership with Air France that will greatly expand price and service options between the U.S. and France. With these carriers, we conduct a traditional code share operation. They place their code on Delta's services and we do the same on theirs. In each instance, we remain competitors. Through our code sharing agreement we purchase seats and market these destinations as our own; even though, in many cases, the aircraft may be operated by the other carrier. We remain competitive with these carriers in each market and consumers enjoy the benefits of more price and service options.

Atlantic Excellence

Delta's Atlantic Excellence Alliance (AEA) was formed in 1994 with Swissair, Sabena and Austrian Airlines. In 1996, the four carriers applied for and received antitrust immunity from the Department of Transportation. This immunity enables us to closely coordinate all aspects of airline operations including pricing, scheduling and sales and marketing. The alliance currently operates 5,600 daily flights to 82 countries.

As compared to our other code share alliance arrangements, this immunized alliance was created to efficiently link the carriers' route networks in the U.S. and Europe. The AEA now has 23 transatlantic flights. The benefits to consumers and communities have been profound. Since 1996, the Atlantic Excellence partners have launched eight new transatlantic services. Thanks to the success of our alliance we now have nonstop service between Cincinnati-Zurich and Cincinnati-Brussels. We have two nonstop flights to Brussels, Zurich and Vienna from New York. In Atlanta, we have double daily flights to Brussels and Zurich and we now have nonstop service to Vienna. This U.S.-European level of service would be impossible to sustain without the efficiencies generated by our alliance.

These new transatlantic services have enabled us to link our U.S. network with the route systems of our European partners. Our Atlantic Excellence partners are able to display their code to 30 destinations in the U.S. In turn, Delta now displays its code to 46 destinations in 26 countries served by our Atlantic Excellence partners. For example, through our alliance relationship, Delta now serves places like Abu Dhabi in the United Arab Emirates, Kiev in the Ukraine and Kampala, Uganda—places we could never profitably serve on our own. Yet through our alliance relationship, we are abl to extend our network and offer our customers the type of seamless, convenient access they are constantly demanding. Our foreign partners are doing the same. They now have daily service to West Palm Beach, Salt Lake City, New Orleans, Phoenix and Lexington through the use of our large domestic network.

Mr. Chairman, these alliances work. They generate more service from more airlines to more cities than ever before. And, because we are competing with other procompetitive alliances, consumers have a myriad of choices to get to their destination. Take, for example, a New Orleans passenger seeking to fly to Cairo. That passenger can travel via our Atlantic Excellence network through Atlanta or New York, or he or she could go via Detroit on the Northwest-KLM alliance or through Chicago on the United-Lufthansa alliance. This type of competition forces us to keep our prices competitive and schedule our flights for the optimum convenience of our passengers.

THE DELTA-UNITED CODE SHARE ALLIANCE WILL GIVE CONSUMERS MORE PRICE AND SERVICE OPTIONS

Two weeks ago, Delta and United announced their intention to form a code share alliance. Previously, Northwest and Continental and American and US Airways announced that they would also form domestic alliances. Each of the proposed alliances contain different features and qualities. The government must, therefore, look at each one on an independent basis. For example, Northwest-Continental involves questions of ownership and control that raise distinctly unique issues than those relating to Delta-United.

Delta's alliance with United is a cooperative venture that will provide tremendous public benefits and advance the customer driven trend toward global transportation

[1] Delta holds a 27% equity stake in Atlantic Southeast Airlines, a 21% equity stake in Comair and a 15% equity stake in SkyWest.

networks. It will strengthen Delta's strategy of disciplined internal growth, build shareholder value and create more opportunities for Delta employees. All of these benefits will be achieved consistent with the government's desire to promote the formation of pro-competitive alliances.

Let me tell you how this will work.

- Delta will place its code on United's domestic route network. Every United flight in the U.S. will also carry the Delta code. Delta will be able to market and sell seats on every one of these flights. United will be able to do the same thing on the Delta system.
- This venture will enable both companies to strengthen and grow their respective operations. We do not plan to reduce services. This alliance is about growth . . . not contraction.
- Domestic competition will be increased as new competitive service options will be added at each of 13 U.S. Delta and United hubs/gateways and new nonstop price competition is introduced on 4,602 daily flights in 543 U.S. city pairs.
- Frequent flyers will be able to accrue and redeem miles on both carrier's programs.
- Every Delta hub will become a United hub and every United hub will become a Delta hub.
- In the future, we hope to expand our combined services to cover our respective international networks.
- Each carrier will remain independent and continue to compete with one another.
- Most importantly, there will be no coordination on pricing. United will be able to sell seats on Delta at whatever price they deem appropriate and Delta will do the same on United. This ensures that the two carriers will remain competitive.

Contrary to the characterization of some observers, this alliance will *NOT* lead to greater industry concentration or airline cartels. And, this is not, as some have suggested, a "virtual merger." Delta and United will remain separate, independent companies. We have no plans to merge, nor will we be seeking antitrust immunity.

Code sharing and reciprocal frequent flyer programs will enable us to offer our customers increased on-line services to hundreds of new cities with more price and frequency options. This alliance constructively addresses one of the major concerns this body faces today—competition and service in small and medium-sized communities. For example, consumers in 56 small and medium-sized communities will now have an additional carrier choice as a result of a Delta-United code share alliance. In the case of 14 of these cities, consumers will benefit from their first competitive service. We believe over time, additional flights and cities will be added as we seek to compete with other airlines and alliances that are being formed.

Our arrangement is structured in a way to ensure that each carrier is only rewarded if they compete successfully to attract new and additional customers. Since we are not sharing revenues or coordinating prices, each carrier must be vigilant to remain competitive IN EVERY CITY WE SERVE.

The Delta-United alliance also creates opportunities for job growth and enhanced security for our employees. I want to strongly emphasize that no work force reductions will result from the alliance. In fact, we think job expansion will occur.

GOVERNMENT POLICIES SHOULD CONTINUE TO FOSTER THE DEVELOPMENT OF ALLIANCES

I stated at the outset of this discussion that we welcome your assistance in crafting policies to address how alliances will operate in the future. Alliances are here to stay. They are the basis upon which we are building our future. We need to work with Congress and the Administration to ensure that carriers can react to this evolution.

The Department of Transportation, the Department of Justice and the GAO have all judged alliances to be in the public interest. DOT and the State Department have developed trade policies that foster the development of alliances. Thanks to their foresight and determination, the U.S. now has "open skies" agreements with 30 countries. Alliances were the catalyst for many of these market-opening agreements. The Administration has also granted limited antitrust immunity to allow a number of alliances to produce the network efficiencies created by cooperation.

By almost any measure, this policy has been hugely successful for consumers, communities and airlines. It has created a competitive environment where the marketplace, rather than artificial government barriers, determines how much service will be provided and what prices will be charged. Alliance formation has not dampened competition in the international arena. It has heightened it. Consumers now enjoy more flights from more carriers to more cities than ever before. But we still have a long way to go to ensure that the regulatory environment facilitates pro-competitive alliance development.

We are very concerned about recent developments in Europe. The European Commission is on the brink of issuing regulations that will severely affect how alliances operate. We believe these actions are being taken without adequate analysis on how alliances have been functioning in the market. Despite a lack of findings to prove that alliances have harmed competition in the European Union, the Commission is prepared to go forward. This presents a serious question for companies seeking to form global alliances: what are the rules we are suppose to operate under and how often can they change?

If carriers are to create global networks with their partners, we need a sense of what the rules are and how they should operate. Alliances are transnational by definition, so we understand the need to subject ourselves to the rules and regulations of various jurisdictions. However, those rules must be coordinated between the home countries of the airlines involved. We cannot operate under a different set of competition rules in every part of the world. As alliances continue to respond to the competitive marketplace, airlines need certainty as to how they can cooperate. To this end, we urge U.S. and European competition authorities to immediately begin a high level dialog aimed at harmonizing competition guidelines and regulations for alliances.

Mr. Chairman, we cannot turn the clock back. Domestic code sharing has been a well recognized element of our competitive U.S. landscape for nearly 20 years. Alliances have also been operating on the international scene for over a decade. They are producing enormous consumer and shareholder benefits. They are generating aircraft and other capital purchases. They are creating jobs. They are now a fixture in the marketplace. We must carefully examine each alliance to determine whether it meets established public interest principles that have been applied during the past 10 to 15 years. When it is clear that consumers have or will be harmed by an alliance, government has a duty to act. Otherwise, these ventures should be permitted to give consumers the choices they want.

Delta appreciates the opportunity to present our views to the Committee. We look forward to working with you.

Mr. HYDE. Thank you, Mr. Yohe.

Mr. Seiden.

STATEMENT OF ELLIOTT M. SEIDEN, VICE PRESIDENT FOR LAW AND GOVERNMENT AFFAIRS, NORTHWEST AIRLINES, INC., WASHINGTON, DC

Mr. SEIDEN. Thank you, Chairman Hyde, Ranking Member Conyers, and other members of the committee. Thank you for inviting me to testify today on behalf of Northwest Airlines on airline alliances.

Our pioneering alliance with KOM has become the model by which other alliances are judged. Our proposed alliance with Continental also will deliver enormous efficiencies and consumer benefits without reducing competition.

An alliance produces services that neither airline could provide individually. Alliances afford millions of travelers new online service which they strongly prefer. In end-to-end alliances like Northwest/Continental, the alliance partners each serve markets that do not extensively overlap. The partners link these distinct service areas, each gaining access to regions of the country not previously served.

There is a significant difference, however, between pro-competitive end-to-end alliances and horizontal alliances, which can be decidedly anti-competitive. A horizontal alliance is one in which a large number of markets overlap. This increases market concentration, without necessarily producing offsetting consumer benefits.

The Justice Department has warned, and you heard those warnings again from Mr. Klein today, of the dangers of horizontal alliances. And the Justice Department has singled out American's proposed alliance with TACA as an example of a dangerous horizontal alliance.

Under Northwest's proposed alliance with Continental, we plan to provide reciprocal Frequent Flier participation, reciprocal executive lounge access, coordination of connecting flight schedules to improve and enhance connectivity between the two networks, airport facility coordination, and code sharing, both domestically and internationally. The carriers will provide seamless service including one-stop check-in for seat assignment, and boarding passes, and baggage transfer.

Airline competitiveness will be enhanced by a Northwest/Continental alliance. Today, Northwest and Continental's domestic networks are half the size of Delta, American, and United. A Northwest/Continental alliance will result in a combined domestic market share of 16.3 percent smaller than Delta, United, or American is today. But big enough to create a fourth national network and to give the big three a run for their money.

Recently, American and U.S. Airways, and Delta and United have announced their own alliances. They may claim they need these alliances to compete with Northwest/Continental, but we think such claims ring hollow. Delta is the largest domestic carrier with 17.4 percent of the market. United and American each has 16.5; Northwest and Continental, to repeat, will only have 16.3. Delta, United, and American do not need to be twice the size of Northwest/Continental to compete with us.

These alliances would create entities much larger than anything our country has seen. United/Delta would have 34 percent of the domestic market; American and USAir would have 25 percent. This will create a league of their own. And Northwest/Continental will not be in that league.

The Northwest/Continental alliance will not reduce competition because there is virtually no overlap between the two networks. Combined Northwest and Continental would provide service domestically to 18,500 city pair markets, but the two will overlap in only seven hub-to-hub non-stop routes. These seven routes comprise .03 percent of the total combined system.

Northwest/Continental also will produce a wealth of efficiencies and consumer benefits. By connecting their networks, Northwest and Continental will create 2,000 new online city pair routes. Duluth to Lubbock, Texas, is a good example. There is today no online service in that market. A passenger must make an interline connection between Northwest and either American or Delta. After the alliance, however, Northwest and Continental will be able to retime their flights to serve Duluth, Lubbock, and thousands of others like it online.

By linking our networks, Northwest and Continental also will provide 17,500 new online flight opportunities on 10,500 existing routes conveniencing some 78.9 million passengers. On average, these 10,500 routes will enjoy a 31 percent increase in flight frequency.

Mr. Chairman, I know that you and the committee are concerned that these airline alliances should be scrutinized closely by the appropriate antitrust authorities to ensure that they not impose anti-competitive harm on consumers. We agree. Last February, we submitted the Northwest/Continental transaction to the Justice Department under the Hart-Scott-Rodino Premerger Notification Act. We have made a full and complete response to all Justice Department requests for documents and information. And although Northwest and Continental have structured their transaction to maintain absolute independence on all competitively sensitive business decisions such as pricing, capacity, and strategic marketing plans, we nevertheless have invited the Justice Department to assume, for the purposes of its competitive analysis, that we will be fully merged. Based on the abundant efficiencies that we produce and the virtual absence of competitive overlap, we are confident we can pass this hurdle.

We are less sure other alliances can pass such a hurdle. But they should be forced to try. Delta/United and American/U.S. Airways, no less than Northwest/Continental should be subjected to a searching scrutiny by the Justice Department to ensure that they do not sacrifice the interest of consumers in a competitive airline industry. If Hart-Scott-Rodino does not by its terms apply to these other transactions, then Justice should use its CID enforcement powers to demand the same types of materials that we have supplied. It would be perverse, indeed, for the Justice Department to devote extensive enforcement resources to investigate the competitive implications of Northwest/Continental, but not transactions that are twice our size.

Mr. Chairman, thank you for giving Northwest the opportunity to discuss these important issues with the committee. I would be happy to answer any questions you may have.

[The prepared statement of Mr. Seiden follows:]

PREPARED STATEMENT OF ELLIOTT M. SEIDEN, VICE PRESIDENT FOR LAW AND GOVERNMENT AFFAIRS, NORTHWEST AIRLINES, INC., WASHINGTON, DC

Chairman Hyde, Ranking Member Conyers and other Members of this distinguished Committee, on behalf of Northwest Airlines' 50,000 employees worldwide, thank you for inviting me to testify today.

Northwest appreciates the opportunity to discuss the state of competition in the airline industry. I would like to address three main issues today: (1) the overall financial and competitive situation in the industry today; (2) the competitive implications of the recently announced alliances; and (3) the DOT guidelines on predatory behavior.

I. There Is Robust Competition Today in the Airline Industry.

"[E]very review of objective evidence—by the Department [of Transportation], the Brookings Institution, the Transportation Research Board of the National Research Council, the GAO and a host of independent studies—has concluded that overall the network-dominated domestic system provides superior, competitive service."[1] I quote from the Secretary of Transportation.

Consumers have benefited tremendously from free and open competition among airlines. Today many more people are flying and they are flying more often. Consumers board a plane bound for some destination approaching a half-billion times each year, more than twice the number in 1978 (when deregulation began). Appendix A at 2. New and expanded service continuously is being offered, and passengers have available to them a wide range of low price options. Indeed, about 95% of all tickets sold in 1997 were discounted tickets. Appendix A at 9.

[1] May, 1996.

People previously not in a position to afford air transportation are now enjoying the benefits of air travel to the far reaches of this country. All of this has been achieved by freeing the airlines from economic regulation.

Contrary to what airline critics might have the public believe, average yields (that is, revenue per passenger mile) have continued to fall between 1990 and 1998 from over 15½ cents per passenger mile to under 13 cents per passenger mile. Appendix A at 8. Nor have fare trends differed as between hub and non-hub markets. Appendix A at 11–14. This is true both for unrestricted fares and peak and off-peak deal fares, and over the range of flight distances. Appendix A at 15–16.

Moreover, claims that unrestricted fares have dramatically increased in recent years are untrue and misleading. Unrestricted fares in fact have grown only moderately over the past seven years, averaging 3.1% growth per year between 1990 and 1997. Appendix A at 9. Only 5.4% of the public purchases these tickets, typically businessmen and women who purchase their tickets at the last minute and require maximum flexibility in their travel plans. *Id.* On the other hand, it is usually overlooked that the higher prices charged to business people ensure that the seats they need at the last minute are available for purchase. If the seats they need were priced at discount levels, they would have been purchased earlier by leisure travelers willing to pay a lower fare, but unwilling to pay the higher "business" fare. The higher prices charged for last minute seats also are necessary to compensate the airline for the risk it takes by holding the seat for sale at the last minute. An airline that does this may fail to sell the seat at any price.

THE AVAILABLE EVIDENCE DOES NOT SUPPORT THE ALLEGATION THAT NETWORK AIRLINES EXTRACT A "HUB PREMIUM

Notwithstanding this remarkably pro-consumer record of achievement by the deregulated airline industry, airline critics stubbornly adhere to a dark view that would have the U.S. public believe that fares are skyrocketing out of control. In particular, it is often alleged that the major carriers have constructed fortress hubs which enable them to charge premiums of upwards of 40 percent in hub markets.[2] The Department of Transportation believes that such fare premiums exist, and further, that such premiums are evidence of market power of major carriers at their hubs, market power that supposedly permits the predatory conduct which it seeks to eliminate through its proposed policy statement on predatory pricing.

The Department does not identify the source of its claim that hub fares are significantly higher than fares in non-hub markets, nor does it explain why any such fare difference must be a reflection of market power. The studies of hub fares of which Northwest is aware, however, do not demonstrate that hub-market fares reflect market power.

Studies on this subject often simply compare fares for flights from certain hub airports to fares for flights from other airports. They thus ignore several factors other than alleged market power that demonstrably affect fare levels and may explain why fares by major carriers for flights to or from hub airports appear to be higher than fares from other airports.

Morrison and Winston, in their Brookings Institution published study, found several factors that need to be reflected in any comparison of hub and non-hub market fares. These factors include (1) length of flight (costs on longer flights are less on a per-mile basis than costs on shorter flights); (2) the number of stops or plane changes on the routes being compared (one-stop flights and routings requiring a change of planes are less desirable, and therefore must be priced less than non-stop flights); (3) passenger mix (flights with a higher percentage of passengers flying on unrestricted coach fares will yield more revenue per mile than flights with a higher percentage of passengers flying on discount fares); (4) identity of the carrier at issue (a carrier may charge higher fares at all airports it serves, not just hub airports, thus negating an inference that higher fares are a result of market power at a hub); and (5) the number of passengers flying free as a result of frequent flyer programs (most frequent flyer miles are earned and redeemed on flights originating or terminating in hub markets and hub fare levels may be set to cover those costs).

Their analysis demonstrated that any hub premium was approximately 5 percent in 1993 (the most recent year for which data were available), far less than the 40 percent figure thrown out without support in the Proposed Policy Statement.[3] The "problem" the Department envisions, therefore, virtually disappears when it is viewed in a more analytical manner.

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[2] 63 Fed. Reg. at 17,920.

[3] Morrison & Winston, *The Evolution Of The Airline Industry* at 46–49.

Indeed, Northwest knows from its own experience that these factors exist in the real world, not just in academic papers.

Average Flight Length. The average trip distance for domestic passengers originating in Northwest's major hubs (Detroit and Minneapolis) is 901 and 944 statute miles, respectively. The average for domestic passengers originating and terminating in all non-hub cities is 1,005 miles, approximately 10 percent more than the Detroit figure and 6 percent more than the Minneapolis figure.[4] Because many costs (such as take-off and landing expenses) do not vary with the length of flight, shorter flights are more costly on a per-mile basis than longer flights.

Number of Stops or Connections. Approximately 90 percent of all domestic passengers originating in hub airports arrive at their destination on either a non-stop or direct (single coupon) flight. For Northwest's major hubs, the figures are 91.6 percent (Detroit) and 89.6 percent (Minneapolis). For non-hub passengers, however, the number is 82.8 percent.[5] In other words, almost twice as many passengers originating in non-hub airports (approximately 17 percent) must change planes for a domestic destination than hub passengers (about 10 percent). Any pricing difference between these different services reflects the reality that non-stop service is the most convenient form of service and that changing planes is less convenient. It is neither surprising nor unreasonable to find that the marketplace reflects this reality.[6]

Passenger Mix. Many airlines, Northwest included, have located hubs in major business centers. It is not surprising, therefore, that a larger percentage of tickets purchased for travel originating at hub airports are at unrestricted fares. At Minneapolis, for example, 30 percent of Northwest's originating passengers are flying on unrestricted fares, while at Detroit, the number is 27 percent. In comparison, only 17 percent of the traffic originating at Los Angeles International is flying on unrestricted fares. The comparable number for Orlando is 11 percent. The higher unrestricted fares skew average fares upward at hub markets, and this factor must be taken into account in any comparison of hub and non-hub market fares.

Identity of Carrier. Any comparison of hub and non-hub market fares also must take into consideration the identity of the carrier at issue. Deregulation means that carriers are permitted to set their own fares, at levels reflecting their own costs and marketing strategies. Thus, one must compare hub and non-hub fares for the same carrier to determine whether hub fares are higher than non-hub fares. (Although, because of the presence of the other factors discussed in this section, such a comparison does not constitute a complete analysis of this issue.) Northwest's fares for hub and non-hub market routes are virtually identical, whether one looks at restricted fares or unrestricted fares.[7]

Frequent Flyer Programs. From Northwest's experience, a very significant number of passengers on hub flights are flying free. Approximately 8.4 percent of Northwest's passengers originating in Minneapolis and 5 percent of its passengers originating in Detroit are flying free on frequent flyer programs.[8] Because these numbers are likely higher than the number of passengers originating in non-hub cities that fly free, this factor must be taken into consideration in comparing hub and non-hub fares.[9]

Thus, there is no hub market premium. Moreover, even if a premium existed, it would not mean that the hub carrier has market power that permits it to engage in predatory activities. The higher fares may be simply reflecting the additional value to passengers of the hub service. An airline operating a hub generally offers a passenger more frequent flights to major cities and serves more domestic and foreign locations than its competitors. "[C]ontrolling for population, hub airports offer non-stop flights to nearly twice the number of cities as airports that are not hubs and they have more than 35 percent more daily departures per city served."[10] Almost all international flights operated by U.S. carriers originate or terminate in their domestic hubs. Moreover, major carriers often fly newer aircraft than other carriers, particularly in their hub markets. All of these factors are valuable to passengers and legitimately justify higher fares (whether higher fares are charged or

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[4] Appendix A at 42.
[5] Appendix A at 43.
[6] Indeed, the Department has previously recognized that "the superior service offered passengers traveling to and from network hubs is a counter-balance to the higher fares." *The Low Cost Airline Service Revolution* at 26.
[7] Appendix A at 15–16, 40.
[8] Appendix A at 23–24, 32.
[9] Morrison & Winston, *The Evolution Of The Airline Industry* at 47.
[10] "New Entrants, Dominated Hubs, and Predatory Behavior," Statement of Professor Steven A. Morrison, Hearing before the Subcommittee on Aviation, Committee on Commerce, Science and Transportation, United States Senate, April 23, 1998, at 4.

not). None of them demonstrates either the existence or the exercise of market power.

ALL AVAILABLE MARKET STRUCTURE AND FINANCIAL DATA DEMONSTRATE THAT THE AIRLINE INDUSTRY CONTINUES TO BE VERY COMPETITIVE

All indicia of industry structure and performance confirm the existing vibrancy of competition in the airline industry and the ill-wisdom of any effort to reregulate it. The

number of competitors serving markets of almost all sizes has increased over the years of deregulation. Appendix A at 3–5. Since 1989, the share of domestic passenger miles flown by new entrants has continued to increase and in 1996 and 1997 reached nearly 18%, its all-time high.[11] The experience of Northwest Airlines is no different. An ever increasing amount of revenue on an ever increasing number of routes are subject to competition from low fare carriers.[12] In 1997, $1.074 billion of Northwest's total revenues of $5.88 billion were exposed to such competition, an increase to over 18% in 1997 from under 3% in 1992. In addition, inter-hub competition has intensified which, in turn, has intensified the need to create the passenger flows that generate the hub network efficiencies required to remain competitive. The industry's financial performance stands as a stark reminder that competition is alive and well. Through 1997, the industry continued to suffer a cumulative net loss approaching $3 billion over a period that began in 1990. Appendix A at 66. Negative net profit margins have prevailed in five of the last eight years. Appendix A at 67. A record net profit in 1997, one of only three profitable years in the last eight, equaled less than 5%. *Id.* Even at that, it is worth noting that the airline industry ranked among the lowest of all industries in profitability. Appendix A at 69–71. These dreadful financial results are not the type one would expect from an industry populated by rapacious monopolists. If we are monopolists, we give new meaning to the term.

II. Alliances That Do Not Restrain Competition Deliver Enormous Consumer Benefits and Should Be Welcomed by the Traveling Public.

Airline alliances significantly benefit the traveling public. Our pioneering end-to-end alliance with KLM has become the model which all other alliances seek to emulate. In addition, our proposed end-to-end alliance with Continental Airlines also will deliver enormous efficiencies and consumer benefits without reducing competition.

An alliance can produce two or more services more cheaply than if those same services were produced separately. It allows the carriers to integrate operations with those of its partner in a way that will enable both to reduce costs, increase revenues, and use combined assets more productively.

Alliances afford millions of travelers new on-line service which they strongly prefer. The NW/KLM alliance has benefited consumers with new on-line service in more than 36,000 city-pair markets.

WHILE END-TO-END ALLIANCES PRODUCE SIGNIFICANT PUBLIC BENEFITS, HORIZONTAL ALLIANCES CAN HARM CONSUMERS

There is a tremendous difference, however, between procompetitive "end-to-end" alliances, and "horizontal" alliances, which can be decidedly anticompetitive.

In "end-to-end" airline alliances, the participating carriers each serve routes, regions, and cities that do not extensively overlap. By forming an alliance, the partner airlines essentially link together these disparate service areas, gaining access to routes and city-pairs to which the partners of the alliance would not have access individually.

In the international arena, our alliance with KLM is perhaps the purest example of a true, procompetitive, end-to-end alliance. Both the Departments of Justice and Transportation acknowledged this fact when they first approved the NW/KLM alliance some five years ago, with a grant of antitrust immunity. At the time the alliance was formed, there was virtually no overlap between the Northwest and KLM systems. In granting Northwest and KLM antitrust immunity, the DOT found that the two carriers were minor players in the transatlantic market, with respective market shares of 4.1% and 3.9% and would become, when combined, only the fifth largest U.S.-European carrier, behind Delta, BA, American and United.

[11] Statement of Professor Morrison, at 1.

[12] Appendix B shows for each of the years 1992 through 1997 local and connecting revenues of Northwest Airlines that are exposed to competition from airlines pursuing a low fare strategy.

The alliance has enabled Northwest and KLM to initiate new flights that previously were not possible. In July 1992, before immunization, KLM operated 58 weekly U.S.-Amsterdam flights and Northwest operated 7 weekly flights to Amsterdam (from Boston, a city that KLM did not serve), for a total of 65. Based on July 1998 schedules, KLM will operate 72 weekly U.S.-Amsterdam flights and Northwest will operate 56, for a total of 128.

This virtual doubling of flight frequencies reflects a doubling of traffic between the U.S. and Amsterdam carried on the two carriers. In 1992, Northwest and KLM combined carried 1.4 million passengers between the United States and the Netherlands. In 1996, the NW/KLM alliance carried a total of 2.5 million U.S.-Netherlands passengers, and we estimate that the alliance carried 2.9 million in 1997, more than double the number carried before the alliance was formed.

Most of this service would not have been operated without the alliance, including service in the hub-to-hub markets. The largest of these, Detroit, generates only 58 passengers per day each way, not enough to support any service much less the three daily flights currently operated.

The NW/KLM alliance succeeded by attracting passengers behind and beyond the hub—so called "bridge" traffic. Approximately 85% of the traffic moving on the hub-to-hub routes is behind/beyond traffic.

In contrast with the procompetitive "end-to-end" alliance of Northwest and KLM is the "horizontal" alliance in which carriers overlap in many of the same markets. These alliances increase market concentration without producing offsetting consumer benefits. The Department of Justice has warned of the dangers of such horizontal alliances. American airlines' proposed alliance with TACA is an example of such an anticompetitive horizontal alliance.

EC REGULATION SHOULD APPLY, IF AT ALL, ONLY TO HORIZONTAL ALLIANCES, NOT END-TO-END ALLIANCES

American's alliance with British Airways also has certain horizontal aspects. The European Commission is trying to "fix" these horizontal problems by applying competitive rules—on airline capacity in hub-to-hub markets, frequent flyer programs, and corporate discounts, among others.

Whatever may be the merits of seeking to "fix" the AA/BA alliance, these competitive rules should not be applied to us. Our hub-to-hub markets exist only to serve the bridge traffic moving between the respective networks of Northwest and KLM. These bridge passengers have multiple choices. If our capacity is restricted on the hub-to-hub markets, the pipeline for the bridge passengers will be constricted and these passengers will lose convenience and competitive choice. The need to provide ample capacity for our "bridge" passengers ensures that we would never restrict output on the hub-to-hub routes.

In a recent letter to Mr. Van Miert of the EC, Assistant Secretary Hunnicutt confirmed the critical role hub-to-hub routes place in fostering network competition:

> U.S. approval of these alliances is based on the conclusion that the appropriate reference frame for evaluating their competitive impact is their overall effect on competition in the transatlantic market, not merely on traffic between any given city-pair. In our analysis of specific alliances we have found that while the alliance partners may reduce competition between themselves for time-sensitive point-to-point local traffic on the relatively few routes where they offer overlapping services, the alliances increase network competition. Further we have recently reviewed data in several alliance markets, and found that many business travelers use connecting services even where non-stop service is available.
>
> Each of the large transatlantic alliances now carries passengers on a connecting basis in thousands of city-pair markets, and connecting services of two or more alliances already compete in hundreds of connecting markers. As the alliances expand their reach through hub expansion, improved coordination, and better marketing, alliance competition will increase, benefiting even more consumers. It is important that this pro-consumer aspect of alliances not be blunted by restrictions aimed at protecting a relatively small number of passengers in hub-to-hub markers.[13]

[13] Letter from Charles A. Hunnicutt to Karel Van Miert, dated April 17, 1998.

END-TO-END DOMESTIC ALLIANCES SUCH AS NW/CO ALSO PRODUCE SIGNIFICANT CONSUMER BENEFITS WITH NO RISK TO COMPETITION

These same principles apply to domestic transportation and domestic alliances. They certainly apply with force and clarity to the alliance announced last January between Northwest and Continental. Under our proposed alliance with Continental, we plan to engage in a variety of joint marketing and operational activities to provide increased utility to our customers and to enhance the competitiveness of both firms. Thus, we plan to provide reciprocal frequent flyer participation; reciprocal executive lounge access; coordination of connecting flight schedules to improve and enhance connectivity between the two networks; airport facility coordination for the same purpose; and code sharing, both domestically and internationally. The carriers will coordinate to provide for common physical product and service standards, and seamless service including one-stop check-in for seat assignment and boarding passes, baggage transfer and operations systems compatibility.

A NORTHWEST-CONTINENTAL ALLIANCE DOES NOT REDUCE COMPETITION

The NW/CO alliance will not reduce competition as there is virtually no overlap between the two carriers' networks. On the other hand, the alliance dramatically enhances consumer convenience and economic efficiency. We will be able to provide a better, more convenient product, and to more effectively compete with the three largest airlines—Delta, United and American.

The NW/CO alliance will substantially enhance the competitiveness of the domestic airline industry. Today, Northwest's and Continental's domestic networks are approximately half the size of each of the big three: Delta, American and United. An alliance between Continental and Northwest will result in a combined market share of 16.3%, which would still leave NW/CO fractionally smaller than each of Delta, United and American.

Combined, Northwest and Continental provide service domestically in approximately 18,500 city pair markets. The two carriers overlap in only 7 nonstop routes—the hub-to-hub routes. These 7 routes constitute .03% of the combined NW/CO system—three hundredths of a percent. There are 168 additional one stop and two stop routes where there is more than trivial overlap between Northwest and Continental, but these constitute less than one percent of the total markets served by the two. In most of these 168 markets, there is another airline in the market that either is at least the size of Northwest or Continental, or that has at least 10% of the market. These data prove that there is virtually no competitive overlap between the networks of Northwest and Continental, and, as a result, there can occur no elimination of competition between the two systems after the alliance is formed.

Moreover, the hub-to-hub routes do not present any competitive problem. These routes get far more capacity than the local market would justify to keep the pipeline open for connecting traffic. Between Detroit and Minneapolis/St. Paul, for example, Northwest offers 15 daily round trips with a total of 2,405 daily seats. This represents a 50% *increase* in nonstop flights from 1992 through 1996. But the local market size between Detroit and Minneapolis/St. Paul is only 296 passengers per day each way ("PDEWs"), enough to fill only 12% of the seats provided. The rest are filled with connecting passengers. (Appendix C) Between Detroit and Memphis, we provide 8 daily round trips, a 45% *increase* in capacity between 1992 and 1996. The local market provides enough passengers, however, to fill only 9% of the seats. Between Memphis and Minneapolis/St. Paul, the story is the same. The local market provides enough passengers to fill only 8% of the seats. (Id.) There is no reason to be concerned, therefore, that hub-to-hub flying constrains output, leading to higher prices. The opposite is true. Hub-to-hub flying leads to a substantial increase in output, well beyond what would be justified by local demand alone, and providing local passengers with far more service then they could ever expect to enjoy were it not for the hub-to-hub nature of the route. The same increase in output will occur on the hub-to-hub routes connecting Northwest's with Continental's networks.

Based on the foregoing, it is clear that the NW/CO alliance will not reduce competition in any relevant market. In fact, the alliance will produce rich and abundant efficiencies and consumer benefits.

A NORTHWEST-CONTINENTAL ALLIANCE PRODUCES LARGE AND SIGNIFICANT CONSUMER BENEFITS

In North America, by connecting the networks of the two carriers, Northwest and Continental will create some 2,000 new routes on which will travel some 3.4 million passengers. An example might bring this home more clearly. Let's consider a typical two-stop market, say Duluth, Minnesota to Lubbock, Texas. Today, there is no on-line service in this market. A passenger must make an interline connection between Northwest and either American or Delta. There is no interline connection available between Continental and Northwest, because the flights are mistimed and do not connect. After the alliance is created, however, Northwest and Continental will be able to retime their networks to serve the Duluth-Lubbock market, by flowing passengers over the Houston-Minneapolis hub-to-hub route, thereby creating an entirely new on-line opportunity for passengers between Duluth and Lubbock, and on thousands of routes like it. As a result of this new demand for the services provided by the combined networks of Northwest and Continental, we anticipate that service between Houston and Minneapolis/St. Paul in the above example, and on all hub-to-hub routes will increase. In addition to these new service opportunities, consumers will experience all of the benefits which flow from on-line service, such as coordinated check-in and baggage handling, common ticketing and reservations, and common frequent flyer programs.

In addition, by linking their networks, Northwest and Continental will provide substantially increased frequency on existing NW/CO routes: 17,500 new on-line flight opportunities on 10,500 routes conveniencing some 78.9 million passengers. On average, these 10,500 routes will enjoy a 31% increase in flight frequency. Finally, Northwest and Continental combined will provide additional routings for millions of passengers. We will in total offer some 9,300 additional routings on some 5,800 routes, conveniencing some 78.5 million total passengers. Over 250,000 passengers on these routings will enjoy shorter block times.

NORTHWEST-CONTINENTAL PRODUCES SIGNIFICANT BENEFITS IN INTERNATIONAL MARKETS

The foregoing competition analysis of NW/CO covers the domestic market only. When one examines the international markets affected by the alliance, one becomes even more enthusiastic. Northwest does not serve Central or South America at all. Continental has a significant presence in that part of the world. The alliance, therefore, will provide on-line access to Latin America for thousands of Northwest's customers, and more competition for American, the dominant force in Latin America. Similarly, Continental has virtually no service between the U.S. mainland and Asia; Northwest is a major player in that market. The alliance will provide new on-line access to Asia for Continental's customers, and enhanced domestic strength for Northwest in its challenge to remain competitive with the newly announced alliances between American and JAL, and United and ANA.

Thus, it is clear that an alliance between Northwest and Continental will produce large and impressive consumer benefits and utility, with virtually no elimination of competition in any relevant market.

RECENTLY ANNOUNCED ALLIANCES BETWEEN DELTA/UNITED AND AMERICAN/USAIRWAYS SHOULD BE CAREFULLY SCRUTINIZED BY THE JUSTICE DEPARTMENT

Last month, American and USAirways announced their own domestic alliance, as did United and Delta. These airlines have claimed that they need their own alliances to compete with Northwest/Continental, but these claims ring hollow. Today, Delta is the largest domestic carrier with 17.4%. of the market. United and American are tied for second place, each with 16.5%.[14] By comparison, Northwest and Continental will have only 16.3% of the domestic industry, smaller than each of the big three today. Whatever may be the motives of Delta, United and American for announcing their alliances, surely it cannot be to remain competitive with Northwest and Continental. They do not need to become twice our size to be able to compete with us.

These proposals would create entities much larger than anything our country has ever seen. United and Delta combined would have 34% of the domestic RPMs, and American and USAirways would have 25%. Each of these transactions must be judged on its own merit, just as the Northwest/Continental transaction must be judged on its unique merit. We are confident that allowing Northwest and Continental to combine forces in an alliance that gets us to the size of the big three as presently constituted is pro-competitive. Today, Delta, United and American dominate flow market traffic because of the size of their networks. An alliance between Northwest and Continental will enable us to compete effectively in these flow markets. (Appendix E.)

[14] See Appendix D.

THE JUSTICE DEPARTMENT HAS THE NORTHWEST/CONTINENTAL TRANSACTION UNDER COMPREHENSIVE REVIEW

Mr. Chairman, I know that you and the Committee are very concerned that these airline alliances all be scrutinized closely by the appropriate antitrust authorities to insure their conformity with the antitrust laws; to ensure that they not harm consumers by increasing concentration in relevant markets. We agree. Last February, we submitted the Northwest/Continental transaction to the Justice Department under the Hart-Scott-Rodino Premerger Notification Act. We have complied fully with all Justice Department rules and requests, and specifically, we have made a full and complete response to the Department's "Second Request" for documents and responses to extensive interrogatories. Justice now has in its possession thousands of documents and analyses describing in great detail all of the competitive and efficiency implications of our proposed alliance. And although Northwest and Continental have structured their transaction to maintain absolute independence on all competitively sensitive business decisions, such as pricing, capacity allocation and market selection, we have nevertheless invited the Justice Department to apply the toughest standard possible to the transaction, and to assume that for purposes of competitive analysis that we will have fully merged when we consummate the transaction.

Based on the rich evidence of efficiencies, and the virtual absence of competitive overlap, we are confident we can pass this high hurdle. We are less sure that the other alliances can pass such a hurdle, but we are sure of this: Delta/United and American/USAirways, no less than Northwest/Continental, should be subjected to the most searching scrutiny by the Justice Department to ensure that they do not sacrifice the interests of consumers in a competitive airline industry. And if the Big Three choose to structure their transactions in a way that avoids the reach of the Hart-Scott-Rodino Premerger Notification Act, then the Justice Department should use its ample enforcement powers and issue CIDs to demand the same kinds of materials that we have supplied to the Department under Hart-Scott-Rodino. It would be perverse, indeed, for the Justice Department to devote extensive enforcement resources to investigate the competitive implications of Northwest/Continental and then turn around and give a free pass to transactions that are twice our size.

III. The DOT's Proposed Rules Against Predatory Pricing Are Dangerous and Should Not Be Implemented.

On April 6th of this year, DOT issued a proposed statement of enforcement policy,[15] which will reserve important segments of the airline market to a new class of federally favored airlines. DOT proposes to accomplish this through the regulation of the central pricing and capacity decisions of all major airlines on literally hundreds of the most important routes emanating from their hub markets. Under the new regulatory scheme, DOT would threaten enforcement action under Section 411 of the Federal Aviation Act, 49 U.S.C. §41712, against any major airline that competes too hard against certain other airlines. To qualify for this federal protection, an airline must:

- Pursue a strategy of "low fares"
- Be "independent."
- Be less than ten years old.

DOT'S PREDATORY PRICING GUIDELINES ARE A SOLUTION IN SEARCH OF A PROBLEM

DOT has proposed this drastic departure from competition policy to remedy a "problem" it has failed to demonstrate exists. DOT claims that consumers are being hurt by a deliberate industry-wide practice on the part of the established carriers to implement "drastic" price cuts and to "flood" the market with low fare capacity in order to drive new entrant carriers out of the market and to deter others from entering. The large carrier supposedly recoups its losses by raising fares to very high levels after the new entrant is gone.

The objective evidence does not demonstrate that there is an industry-wide problem. The practice of reducing price and adding capacity in response to low fare competition that is assumed to be permanent is often the profit maximizing response for a network airline.

On occasion, Northwest has responded to low fare entry with price cuts and capacity increases. On other occasions, we have responded very differently. Between 1993 and 1998, there were 32 occasions on which low fare carriers entered a Northwest route. Sixteen ultimately exited, and sixteen remain today. We matched the

[15] Docket No. OST–98–3731.

new entrant's fare on all 32 occasions. Of the sixteen that exited, we added capacity in ten. Of the sixteen that remain, we added capacity in ten. In every instance, our commercial response was dictated exclusively by what would maximize revenues and profits for Northwest Airlines on a network basis. On no occasion did we assume as part of our profit maximizing analysis the exiting of the new entrant. And as you can see from the record, the outcome of our competitive responses to new entrants has been totally unpredictable. Half the time, they exit; half the time, they keep right on competing. And there is no difference in the outcome arising from whether we added capacity or not.

The DOT seems to believe the industry treats Southwest differently. Professor Morrison, however, detects no such difference:

> Airlines may believe that they can successfully repel the entry of most post-deregulation new entrants. However, it does not seem reasonable that they would believe this applies to all new entrants, especially the premier "new entrant," Southwest Airlines. The anecdotal evidence presented below suggests that the strategy of matching a new entrant's price is followed in both cases. Sometimes the result is the new entrant leaves the route, sometimes the carriers continue to compete for several years, and in other cases the incumbent firm abandons the route to the new entrant.[16]

Nor is it true that Northwest treats Southwest differently. When Southwest Airlines entered the Detroit-Nashville market in 1997, for example, we matched their price and added one flight because it was the profit maximizing thing to do for our network. In excess of 90% of our seats are offered at the Southwest levels. 68% are sold at Southwest's lowest levels. This is further evidence that such a strategy is not, by itself, evidence of predatory intent. No airline manager in his or her right mind expects to drive Southwest out of a market.

DOT'S PROPOSED RULE IS A DRASTIC, DANGEROUS AND MISGUIDED DEPARTURE FROM EXISTING US COMPETITION LAW AND POLICY

DOT's proposed action should not be viewed as a mere tinkering or fine tuning of the competitive marketplace. Rather, it is a fundamental departure from the core rules of competition. Its impact will be dramatic. The major airlines will be hobbled in their ability to compete on the merits for those passengers upon whom they are highly dependent to maintain the volume, efficiency, and sustainable revenues necessary to maintain fully effective hub and spoke systems. Reservation of passengers to the new protected class of airlines inevitably will lead to a reduction by the major airlines in the quantity of service they can provide, a diminished ability viably to offer service on the least dense routes, and to higher prices throughout their hub systems.

DOT will take into account neither the comparative efficiency of the major airline and its smaller rival, the comparative quality of their service, nor the cost-based justification of the major airline's competitive initiatives in performing its analysis. Instead, DOT will disregard its regulatory mandate, along with well established principles of antitrust law and policy, and simply assume a predatory purpose and effect of actions by a major airline that are plainly motivated to benefit consumers and thereby preserve the major airline's competitive position in the market. To protect smaller airlines from competition and reserve to them a passenger base that will aid in their survival, DOT proposes to prohibit major airlines from:

1) increasing capacity and reducing fares, if to do so would result in the major airline providing low fares to passengers that otherwise would have been willing to pay higher fares; or
2) reducing fares and carrying a number of local passengers that exceeds *either* the seat capacity or the number of low fare passengers carried by the smaller airline, if to do so would result in the major airline providing low fares to passengers that otherwise would have been willing to pay higher fares.

Adverse DOT action may be avoided, but to do so a major airline must be able to demonstrate that there was no "reasonable alternative response" that could have resulted in lowering fares to fewer passengers that would have been willing pay higher fares.

The extent of the intrusiveness of this pervasive regulatory scheme, not to mention the costs and uncertainty it would impose on the industry, hardly can be overstated. The array of pricing and capacity decisions normally left to firms in an open

[16] Statement of Professor Steven A Morrison before the Subcommittee on Antitrust, Business Rights, and Competition, Committee on the Judiciary, U.S. Senate, April 1, 1998 at 4.

and unregulated market will be severely circumscribed. To be sure, DOT is aware of the implications of its proposed new scheme. DOT has advised that a major carrier can minimize DOT oversight and intervention by:

> ". . . matching the new entrants' low fares on a restricted basis (and without significantly increasing capacity) and relying on its own service advantage to retain high-fare traffic."[17]

In short, a major carrier must leave to the new entrant any passengers that it cannot accommodate on its existing flights, and it may accommodate additional passengers on its existing flights only to the extent that passengers who are willing to pay higher fares are not offered lower fares. Thus, for example, were a fare decrease to result in a small carrier filling 120 seats, the major carrier ordinarily would be limited to selling no more than 120 seats at prices lower than its previous fares. But even 120 may be too many low fare network carrier seats for the DOT regulators if they conclude, based on their own *post* hoc analysis (after the predictable complaint from the new entrant) that the major airline could have charged some of the 120 passengers higher fares by relying "on its own service advantage."

What's worse, the major carrier has no way of knowing how many seats the low fare new entrant is offering at any particular fare, nor does the major carrier have any way of knowing how many passengers it actually carries at any particular fare. The major carrier must guess at both of these figures at its peril, for if it guesses wrong, it will be found, after the fact, to have violated the DOT rules.

To the extent that a major airline concludes that on some routes it may make sense to develop shuttle-type low price service through a low cost "airline within an airline" operation, that operation will be hobbled by the same preference rules as apply to its parent's hub operation because it would not qualify as an "independent" airline. Accordingly, the major airlines' incentive to invest in such cost reduction strategies will be diminished.

In light of the legion of uncertainties in the rule (What is a "low fare"? What is a "very low fare"? What is a "low fare strategy"? What is a "reasonable alternative strategy"? How many seats can be offered? How many passengers can be carried? What is "substantially below the major's previous fare"?), the only safe strategy for the major is to do nothing and cede the market to the new entrant. If this is what the majors are obligated to do, the DOT will have unwittingly put in place a policy that dismantles the hub and spoke network system, for without access to local traffic, service on many spokes will have to be reduced or eliminated altogether.

This proposed new regulatory scheme of accommodation in place of competition is borne of basic misconceptions and faulty policy choices, a few of which I hope I might briefly address today. Implicit in the proposed new regulatory scheme is a fundamental misunderstanding of the economics of the hub systems that are common to the major carriers. Smaller new entrants are fast to attribute their failures to predation rather than to the superiority of their competitor's service offerings or the integrative efficiencies that allow (if not mandate) an aggressive competitive response. It thus is particularly problematic that the DOT proposes to scrutinize the pricing and capacity decisions of major airlines without taking into account the revenue effects of their decisions on their overall hub systems, or whether the major airlines are offering service below some appropriate measure of cost. These conceptual oversights are all the more troubling when applied to an industry that operates on razor thin margins in much of its network and overall hardly can be characterized as producing monopolistic returns.

Over the coming weeks and months, we at Northwest Airlines hope to expand and elaborate on these points. Our sincere hope is that after a thorough airing of the issues, we will retain the paradigm of airline deregulation: open competition policed by reasonable and well-established antitrust principles. Critics of airline competition point to the failure of the Justice Department to file a single case of predatory pricing as evidence that the laws against predatory pricing have failed. Justice has had hub airline practices under continual scrutiny for the past several years. The fact that Justice has yet to file a predatory pricing case ought not to be judged as a failure of antitrust enforcement, but rather as evidence that no antitrust violation has yet been found. Assistant Attorney General Klein has announced that the Department will complete its current investigations later this fall. If Justice finds no violation, that should be the end of the matter—for DOT no less than Justice.

[17] *Id.* at 8.

THE HUB SYSTEMS OF THE MAJOR CARRIERS ARE EXTRAORDINARILY EFFICIENT

The airline industry discovered in the early years of deregulation that tremendous efficiencies flow from the establishment of a network. Through a hub system, airlines are able to offer passengers from many origins one-stop and two-stop flights to many destinations. The result is a more efficient use of facilities and, as the network grows, the increasing provision of service to otherwise under-served, thinly traveled destinations.

Northwest Airlines has invested heavily in its hub system, dramatically growing its hubs. At Minneapolis/St. Paul, since 1990, we have increased domestic seats offered by 27%, and international seats offered by 260%. Northwest now serves 134 nonstop domestic and international destinations with 487 daily departures.

At Detroit Metro, Northwest has, since 1990, increased domestic seats offered by 42%, and international seats offered by 84%. We now serve 117 nonstop domestic and international destinations with 512 daily departures.

It is quite important to understand that hub and spoke systems create significant demand and cost inter-relationships among city-pair routes. This network system creates economies of scope by combining passengers traveling nonstop to a particular destination with those that originated at, or are traveling to, a different destination. Economies of scope, in turn, allow hub carriers both to increase the frequency of service and to achieve economies of scale associated with the use of larger aircraft.

In light of these economic realities, it is not surprising that, in addition to increases in the frequency of service on its existing hub routes, Northwest continues to add new destinations to its system. Since 1992, we initiated 38 new destinations from Minneapolis/St. Paul and 26 new destinations from Detroit Metro. Each new spoke served from the hub results, through connection at the hub, in service to hundreds of markets.

At least two very important criticisms of DOT's proposed new regulatory scheme arise from a proper understanding of the hub system. First, the failure of many new carriers in competing with hub carriers should be of no surprise. The major carriers have become increasingly efficient and the airline industry is vibrantly competitive (a point to which I will later return). It is less than surprising that many passengers decide that, fares being equal, the hub airline with its better schedules, frequent flier programs, and in-flight services offer a better value than the new entrant carriers. It is equally understandable that a failing new carrier will complain and seek from the regulators shelter from the forces of competition. But, it is perverse in the extreme for the government to grant those pleas to preempt competitive market outcomes by promulgating special rules to protect infant and frequently poorly managed airlines from the vigorous and lawful competition promoted by the antitrust laws.

Second, and equally important, evaluation of the competitive response of a hub carrier to its smaller rivals must take into consideration the dynamic interrelationship of demand and costs in a hub system. The loss of passengers by a hub carrier to a competitor affects in complex and interactive ways not only the economics of a single flight on a single city-pair, but the entire interrelated hub system. The benefit of winning back from a new entrant a lost customer can generate revenue benefits beyond those attributable to a particular flight on a particular route.

Conversely, restricting a major hub airline from competing effectively (in order to protect a favored class of smaller airlines) produces the untenable outcome of preventing the hub airline from taking competitive action necessary to achieve systemwide efficiencies. At the same time, the restriction preempts market forces in testing whether the protected carrier is more efficient and offers service more desirable to consumers. Even worse, the protected carriers will game the regulatory system to deprive consumers to the maximum extent possible of the competitive benefits they otherwise would have derived from free and open competition with the major airlines. For example, it will calibrate its fares to a level no lower than is necessary to create demand equal to its capacity plus the equal number of passengers that the major airline is permitted by DOT to carry at the lower fares.

Given the importance to major airlines and the consuming public that the forces of competition be allowed to choose winners and losers,[18] it is particularly troubling

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[18] As Professor Morrison observed in his recent Senate testimony:

> One exceptional source of benefits [of airline deregulation] is provided by competition exerted by Southwest Airlines and other new entrants. . . . [A]ny policy to combat cases of alleged predatory behavior needs to develop a basis for distinguishing a normal

Continued

that, under DOT's proposed new regulatory scheme, a major airline's pricing and capacity decisions will be scrutinized and sanctioned without regard for whether they truly are predatory under well-established revenue/cost standards.

DOT PROPOSES TO ESCHEW ESTABLISHED PRICE/COST TESTS FOR PREDATION

Mr. Chairman, the wisdom of the DOT's proposed policy need not be evaluated in a vacuum. We are informed by the Airline Deregulation Act of 1978, the legislative history of the Federal Aviation Act, and by some 80 years of judicial precedents involving real-world allegations of predatory pricing, the result of which is a well developed analytical framework designed to protect the interests of the consuming public.[19]

In its Policy Statement, the DOT states that under Section 411 of the Federal Aviation Act, it may "stop carriers from engaging in conduct that can be characterized as anticompetitive under antitrust principles *even if it does not amount to a violation of the antitrust laws.*" Policy Statement at 7. For the DOT to move beyond well-defined and considered rules against predatory pricing as established by the courts under the antitrust laws would be both bad public policy, and unlawful.

IMPORTANT COMPETITIVE AND CONSUMER INTERESTS WILL BE HARMED BY THE DOT'S PROPOSED RULE

Predatory pricing like other types of anticompetitive conduct has long been the province of the federal antitrust laws—in this case, the Sherman Act, aptly described by the United States Supreme Court as "a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade."[20] Those laws rest on the fundamental premise that "unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress," while at the same time providing nothing less than "an environment conducive to the preservation of our democratic political and social institutions."[21]

Pricing is predatory and unlawful under the antitrust laws when used willfully to acquire and maintain monopoly power.[22] There is nothing wrong with competing aggressively, even if in the hope of becoming a dominant firm. As Judge Learned Hand explained long ago: "The successful competitor, having been urged to compete, must not be turned upon when he wins."[23] It is the acquisition or maintenance of monopoly power by unreasonable means that concerns the antitrust laws. And one of those unreasonable means that has long been addressed by the antitrust laws is the act of a monopolist to sustain short-term losses in a pricing war of attrition against a competitor, only to reap long-term monopoly profits once its would-be rival is driven from the market.

But competitors often complain that their rival's low prices are "predatory," when in fact they reflect nothing more than vigorous competition by an efficient firm offering a product or service more desired by consumers. For that reason, the courts have crafted a specific set of rules when a claim of monopolization rests on alleged predatory pricing. In its recent treatment of the issue, the United States Supreme Court established a requirement of proof of two critical factors, both of which are glaringly absent from the DOT's proposed policy:

- First is that the challenged pricing be below an appropriate measure of cost.[24] Although courts may debate what measure of costs is most appropriate (*e.g.*, whether they be average variable cost or marginal cost), no court will condemn pricing unless it is below a defined measure of a firm's cost.[25]

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competitive response from a predatory one—a difficult task in a network industry like the airlines where route-level costs are difficult to define and measure.

Testimony of Steven A. Morrison, Hearing before the Subcommittee on Antitrust, Business Rights, and Competition, Committee on the Judiciary, United States Senate, at 5, April 1, 1998.

[19] As early as 1911, the Supreme Court identified predatory pricing as an offense within the proscription of monopolization in Section Two of the Sherman Act. *United States* v. *American Tobacco Co.*, 221 U.S. 106, 182 (1911); *Standard Oil Co.* v. *United States*, 212 U.S. 1, 43 (1911).

[20] *Northern P. R. Co.* v. *United States*, 366 U.S. 1, 2 L.Ed.2d 546, 78 S.Ct. 514 (1958).

[21] *Id.*

[22] *United States* v. *Grinnell Corp.*, 384 U.S. 563 (1966).

[23] *United States* v. *Aluminum Co. of America*, 148 F.2d 416, 430 (2d Cir. 1945)

[24] *Brooke Group, Ltd*, v. *Brown & Williamson Tobacco Corp.*, 113 S. Ct. 2587 (1993) (the plaintiff must demonstrate that the "prices complained of are below an appropriate measure of its rival's costs").

[25] It would be ironic indeed if the antitrust laws could be used to protect a less efficient firm against aggressive price-cutting by a firm pricing where marginal cost equals price, the level

- Second, the antitrust laws require a dangerous probability /that the monopolist will "recoup" its investment in below-cost prices.[26] This requirement is founded on the common sense principle that no firm will knowingly set a price below cost if there is no rational prospect of recovering the lost revenues once a rival has been successfully driven from the market.

DOT's proposed enforcement policy contains neither of these elements. Nowhere in the policy is there a requirement that a carrier's prices be below cost to be condemned. To the contrary, the DOT is quite clear in its intention to condemn an airline that lowers its fares in response to competition even with profitable, above-cost fares. Its proposed policy is to initiate enforcement proceedings against a carrier that lowers its fares "substantially below the major carrier's previous fares" or simply to the level of the "new entrant's low fares," so long as the pricing results "in lower local revenue than would a reasonable alternative response." In short, a major carrier that responds to competition from a smaller rival with lower prices acts at its peril if DOT decides in its discretion that the carrier made an "inordinate sacrifice in local revenues," regardless whether the new, lower fares are profitable.

And because a carrier need not price below cost to run afoul of DOT's regulatory scheme, there is no need to prove, as the antitrust laws require, that the carrier can recoup its losses. Indeed, there is not even a requirement that the carrier have or threaten to acquire monopoly power in any defined market, as the antitrust laws require.

It is not surprising that, against this backdrop, the DOT contends that the activity it seeks to condemn "is analogous to (and may amount to) predation within the meaning of the federal antitrust laws." Policy Statement at 7. Nor is it surprising that the DOT seeks to cast the price and capacity decisions of the major airlines with which it is concerned as "unfair exclusionary behavior." No amount of wordsmithing, however, can alter the fact that unilateral price and output decisions by major airlines either are predatory or they are not, and that well-established standards under the federal antitrust laws have been developed to make that assessment. DOT's proposed policy represents a radical, unprecedented departure from those federal antitrust laws that inevitably will undermine consumer welfare.

DOT announced that it intends to work closely with the Department of Justice in implementing its new regulatory scheme. However, the Justice Department has long made clear its view that "fares themselves cannot be used to establish predatory pricing unless they are shown to be 'below cost.'"[27] "[W]here the price is not below cost, no further inquiry is required."[28]

The carefully tailored standards of the antitrust laws were created by design; they are central to the very purpose of the antitrust laws and our marketplace economy. The goal of the antitrust laws, after all, is to foster vigorous competition among rivals, especially price competition. As the Supreme Court put it: "Cutting prices in order to increase business often is the very essence of competition."[29] Condemning a firm for competing *too* aggressively, with prices that are too low, should be done only with extreme hesitation, lest the consuming public lose the very competitive benefits that we are here today to promote. Mistaken condemnations under the antitrust laws, as the Supreme Court has explained, "are especially costly, because they chill the very conduct the antitrust laws are designed to protect."[30]

Until promulgation of these guidelines, the DOT faithfully had followed the law, and the airlines were free to compete aggressively for the benefit of consumers. Thus, in 1982, the CAB explicitly held in *Capitol Air, Inc.*, Order 82–7–107 at 5 that

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that results "in the optimum allocation of resources." Alfred Kahn, *The Economics of Regulation*, Vol. 1, p. 67.

[26] *Brooke Group*, 113 S.Ct. 2587.

[27] Business Review Request, British Airways PLC, issued by the Antitrust Division of the Department of Justice (Dec. 20, 1984), p.2. (A copy of this Business Review Letter is attached as Appendix F.)

[28] *Id.* at 2, n.1. See also Remarks by Roger W. Fones, Chief of the Antitrust Division's Transportation, Energy, and Agriculture Section, Before the American Bar Association Forum on Air and Space Law (June 12, 1997), explaining that the basic principles of an antitrust analysis of alleged predatory pricing in the airline industry require that:

"The incumbent's prices must be 'below an appropriate measure' of its own costs.

Corollary A: An appropriate measure of costs should not establish a price umbrella for inefficient firms.

Corollary B: An appropriate measure of costs should minimize the risks of condemning legitimate competitive behavior.

Corollary C: An appropriate measure of costs should be reasonably measurable with a high degree of confidence and predictability."

[29] *M..sushita Elec. Indus. Co.* v. *Zenith Radio Corp.*, 475 U.S. 574, 594 (1986).

[30] *Id.*

it would "not consider marginal cost pricing to be anticompetitive or otherwise illegal under Section 411 of the Act." It recognized that "[i]t is a generally accepted economic principle that firms in competitive markets price at marginal costs. Such pricing is desirable because it maximizes consumer welfare and results in the optimum allocation of resource." The Board cited Alfred Kahn, *The Economics of Regulation*, Vol. 1 p. 67, to support this basic economic principle.

DOT's proposed enforcement policy poses a particularly severe threat to competition in the airline industry. By replacing the antitrust law's cost-based standard for predation with an undefined standard of "reasonableness," airlines no longer will be able to judge in advance the legality of their pricing decisions. Under the proposed policy, price cuts will be made at a major airline's peril, and will be outright prohibited if too many consumers benefit from them. Senior citizen discounts will be at risk; internet "cybersaver" fares will be at risk; bereavement fares will be at risk; supermarket discount coupon fares will be at risk; free or deeply discounted seats for infants under two years of age will be at risk. Indeed, all price discounting will be at risk.

At risk, also, will be fleet planning. Today, a major airline will review its plans ten to twenty years out, and order large number of new aircraft to fund anticipated demand on specific city pair routes. Under the DOT's rules, the airline will be precluded from installing purchased equipment on those of its planned routes where the increased capacity at the prevailing fare level would violate the DOT's guidelines.

The result only can be to chill competition on all sides; to protect competitors at the expense of competition; to put the interests of new rivals above the financial interests of the flying public; and to deprive consumers of the very benefits that new competition is supposed to bring.

THE DOT'S PROPOSED GUIDELINES ARE UNLAWFUL

The DOT is wrong in its belief that the Airline Deregulation Act authorizes it to substitute for the definition of predation contained in the antitrust laws its own sense of what types of competitive behaviors are "reasonable". The Airline Deregulation Act of 1978 expressly specifies that the DOT is not to find unlawful a low fare unless it would be the type of activity that a district court would find unlawful under the antitrust laws. In the definitions section of the Airline Deregulation Act, Congress specified that "'predatory' means a practice that violates the antitrust laws. . ." 49 U.S.C. §40102(a)(34). This interpretation is consistently applied throughout the legislative history and the CAB and DOT decisions in the area.

The Congress instructed the DOT not to utilize complaints of predatory pricing by poorly managed firms as a pretext to reintroduce price and capacity controls:

> It is the express intention of the committee that the [DOT] not utilize its power to use the rubric of "predatory" to find lower fares unlawful unless such low fares are truly predatory. . . . Thus, the committee would not expect the [DOT] to strike down a low-fare level which represents genuine competition simply because it would tend to decrease the revenues of less efficient carriers in the market or perhaps *force from a given market carriers* who were not able to provide the price and service mix which the passengers in that market desired. It is for this reason that the bill amends section 101 of the Aviation Act to define "predatory" as behavior which would constitute a violation of the antitrust laws. In other words, *the [DOT] is not to find unlawful a low fare unless it would be the type of activity which . . . a district court would find unlawful under the antitrust laws.*

S. Rep. No. 631, 9th Cong., 2d Sess. 107–108 (1978) (emphasis added). See also *Air Florida* v. *Eastern Air Lines, Inc.*, Order 81-1-101 (Dkt. No. 37313) (Jan. 21, 1981), pp. 3–4, n.4 (acknowledging that "Congress did not intend us to hold fare reductions unfair which do not violate the antitrust laws.").

CONCLUSION

Thanks to deregulation, competition is alive and well in the airline industry. Under the Airline Deregulation Act of 1978, prices are down, output is up and travel is up. Market forces have done for American consumers precisely what the congressional framers of deregulation intended.

Consolidations that expand network coverage without eliminating competition in overlapping markets—like Northwest/Continental—should be favored because they provide consumers with greater value and more competition. Similarly, aggressive price competition among airlines delivers massive consumer benefits and must be promoted on all occasions. Vigilant antitrust enforcement has a central and critical role to play in ensuring that only consolidations that do not harm competition, and that promote consumer choice are permitted. Similarly, vigilant antitrust enforcement is necessary to ensure the preservation of vigorous price competition. But it is equally important that we not stray from sound antitrust principles, established over the years by the Congress and the courts, in assessing airline alliances and mergers, and airline pricing. It is critical that we adhere to the rigors of the antitrust laws, because substituting vague bureaucratic notions of "reasonableness" for vigorous application of hard antitrust analysis inevitably will harm commoners and the economy.

Thank you.

Competition, Fares and Value at Hub Cities and Beyond

A Presentation by:

Northwest Airlines

May, 1998

Table of Contents

Competition, Fares and Value
at Hub Cities and Beyond

Airline Competition in the U.S. Since Deregulation

Industry Competitiveness Has Increased Enormously Since Deregulation

Between 1978 and 1996...

- Total Domestic Traffic has Grown from 202 Million Passengers to 393 Million[1/]
- But the Number Of Passengers in Markets Where Leading Carrier Market Share is 90% or Greater has Declined from 57 Million to 41 Million
- The Number of Passengers Traveling in Markets Where Leading Carrier Market Share is Less Than 40% has Increased from 49 Million to Over 160 Million

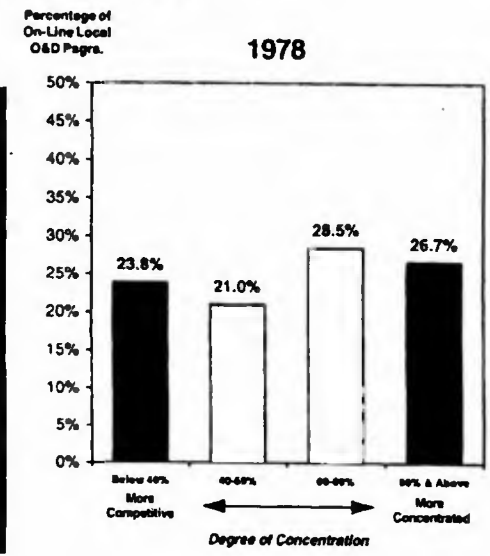
1/ "True" Origin-Destination Passengers. An Origin-Destination Passenger is Counted Once Per Directional Origin-Destination Trip, Regardless of the Number of Times an Aircraft is Boarded Enroute. "Enplaned Passengers" Are Counted Each Time a Passenger Boards an Aircraft. In 1996, There Were 558 Million U.S. Domestic Scheduled Passenger Enplanements (Source: FAA).

Prior To Deregulation, the Industry was Characterized by Markets Where the Leading Carrier Share Often Exceeded 90 Percent

Distribution of On-Line Origin-Destination Passengers by Degree of Market Concentration

1978

Concentration/Market Share	Local On-Line O&O Pegrs.	Percentage of Total
100%	15,869,670	11.0%
90-99%	22,575,900	15.7%
Total, 90% and Above	**38,445,570**	**26.7%**
80-89%	9,859,900	6.8%
70-79%	14,872,310	10.3%
60-69%	16,247,630	11.3%
Total, 60%-89%	**40,979,890**	**28.5%**
50-59%	15,100,130	10.5%
40-49%	15,201,310	10.6%
Total, 40%-59%	**30,301,440**	**21.0%**
30-39%	13,865,670	9.6%
20-29%	10,687,670	7.4%
10-19%	5,138,520	3.6%
1-9%	4,541,490	3.2%
Total, Below 40%	**34,233,350**	**23.8%**
Total, All Markets	**143,960,200**	**100.0%**



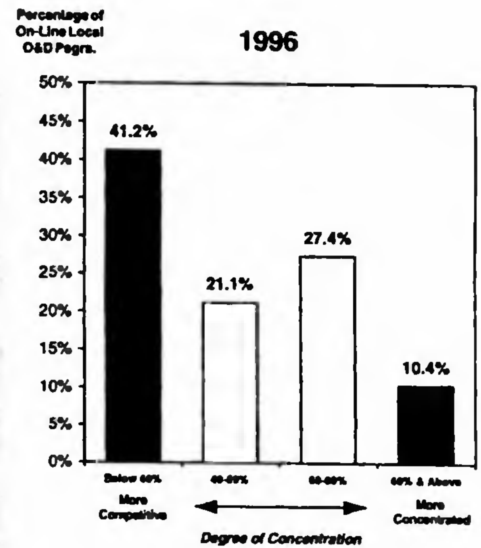
Source: USDOT O&D Survey Table 10: YE 12/31/78 & 9/30/96

Since Deregulation, Industry Competition Has Increased Dramatically

Distribution of On-Line Origin-Destination Passengers by Degree of Market Concentration

1996

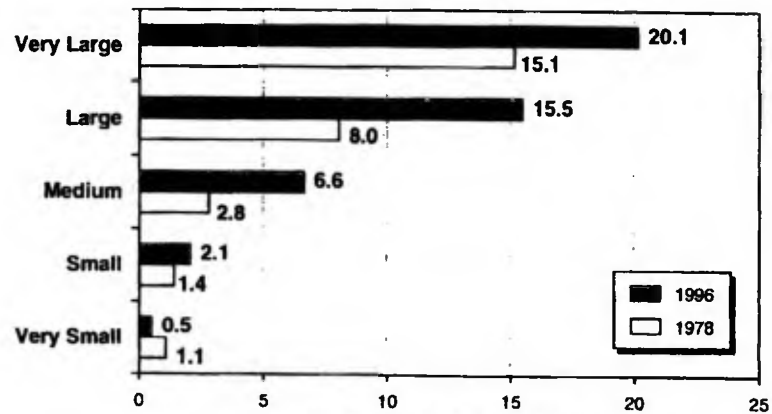
Concentration/Market Share	Local On-Line O&D Psgrs.	Percentage of Total
100%	11,166,000	3.0%
90-99%	27,384,090	7.4%
Total, 90% and Above	**38,550,090**	**10.4%**
80-89%	26,809,180	7.2%
70-79%	33,471,030	9.0%
60-69%	41,517,210	11.2%
Total, 60%-89%	**101,797,420**	**27.4%**
50-59%	39,891,300	10.7%
40-49%	38,613,870	10.4%
Total, 40%-59%	**78,505,170**	**21.1%**
30-39%	43,521,300	11.7%
20-29%	36,310,730	9.8%
10-19%	37,075,190	10.0%
1-9%	36,160,890	9.7%
Total, Below 40%	**153,068,110**	**41.2%**
Total, All Markets	**371,920,790**	**100.0%**



Source: USDOT O&D Survey Table 10: YE 12/31/78 & 9/30/96

The Average Number of Competitors has Increased at All Cities Except the Very Smallest Markets

Average Number of Competitors at Each City
1978 vs. 1996



Very Large:	More Than 10 million Enplanements in 1996
Large:	1-10 Million Enplanements in 1996
Medium:	Between 100 Thousand and 1 Million Enplanements in 1996
Small:	10-100 Thousand Enplanements in 1996
Very Small:	Less Than 10 Thousand Enplanements in 1996

Source: Form 41 T-100 and T-3 reports

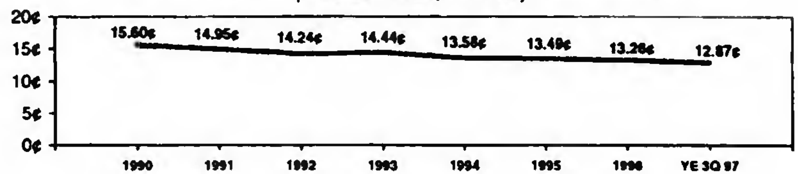
Competition, Fares and Value
at Hub Cities and Beyond

Overall Fares in the U.S.

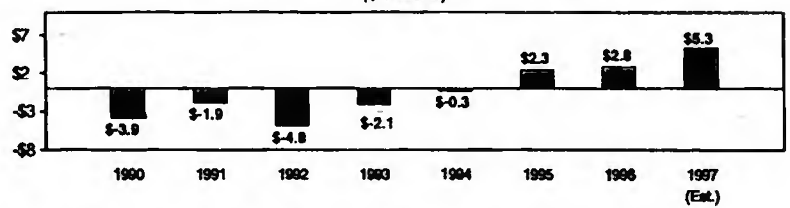
As the U.S. Airline Industry Has Recovered from Its Enormous Losses of the Early 1990's, Real Air Fares in the United States Actually Have Continued to Decline

Contrary to Conventional Wisdom, Average Yields in Real Terms are Now 17% Lower than They Were in 1990

U.S. Scheduled Airlines, System Revenue Per Passenger Mile
(Constant Dollars, YE 3Q97)



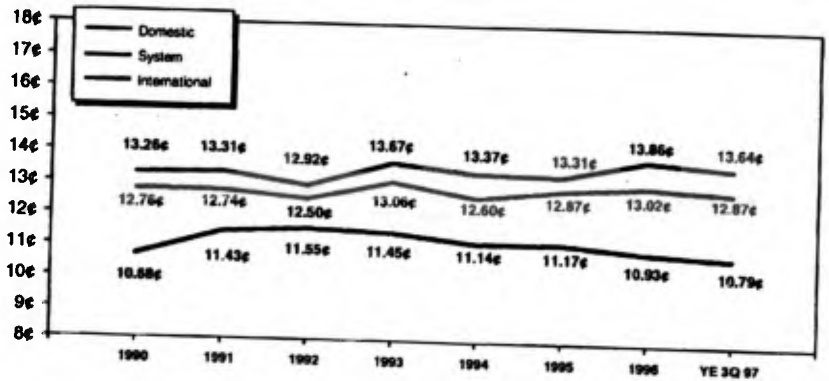
U.S. Scheduled Airlines, Net Income *(Loss) After Tax*
($ Billions)



Sources: Air Transport Association, U.S. Dept. of Transportation, Bureau of Labor Statistics

Even in Nominal Terms, Average Air Fares Have Increased Only Slightly During the Past Seven Years

U.S. Scheduled Airlines, Revenue Per Passenger Mile *(Cents)*
(Current $)

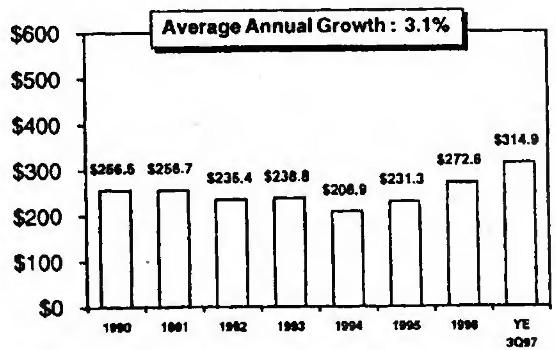


Source: Air Transport Association, U.S. Dept. of Transportation, FAA

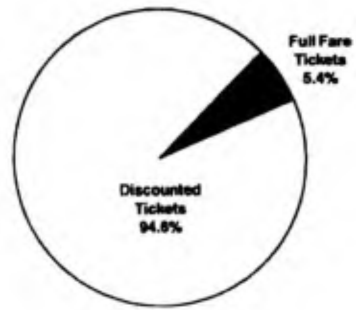
Undiscounted Fares Have Grown Moderately Over the Past Seven Years...But These Fares Account for Only a Small Fraction of Tickets Purchased on Major U.S. Passenger Airlines

Unrestricted Coach Fares, Adjusted for Inflation, Have Grown 23% (3.1% per Year) Since 1990, But are Purchased by Only 5% of Air Travelers

Average Unrestricted Coach ('Y') Directional Fares, Top 500 U.S. Domestic Markets
(Constant Dollars, YE 3Q97)



Distribution of Travelers on U.S. Airlines by Type of Ticket, 1997

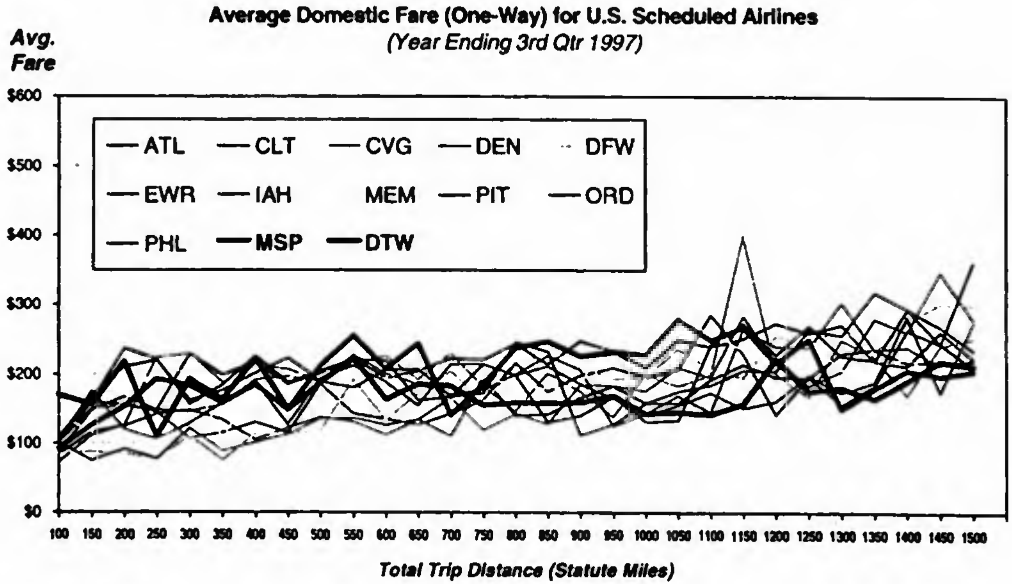


Source: U.S. Dept. of Transportation Databank 1A; Air Transport Association, Bureau of Labor Statistics

Competition, Fares and Value
at Hub Cities and Beyond

Fares at Northwest's Hubs

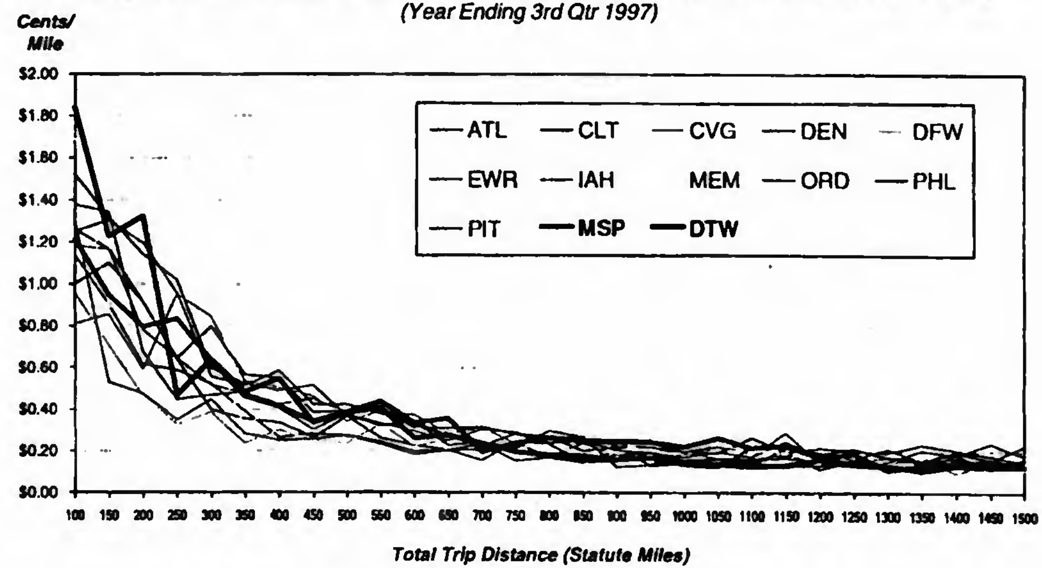
Airfares at Northwest's Minneapolis/St. Paul and Detroit Metro Hubs Do Not Differ Meaningfully from Fares at Comparable Hub Airports



Source: DOT Databank 1a

Yields at Minneapolis/St. Paul and Detroit Metro Do Not Differ Meaningfully from Yields at Comparable Hub Airports

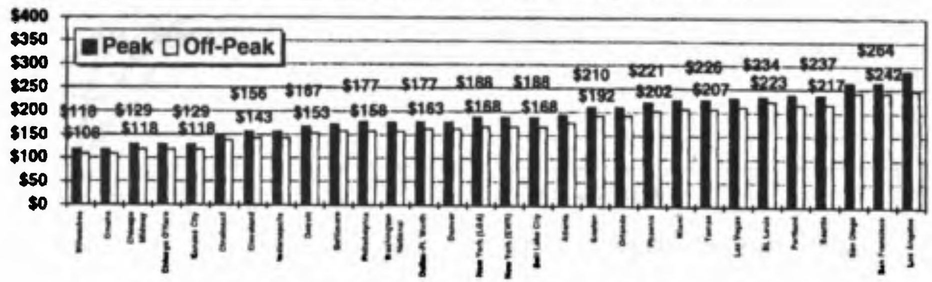
Average Domestic Yields (Revenue per Passenger Mile, One-Way) for U.S. Scheduled Airlines
(Year Ending 3rd Qtr 1997)



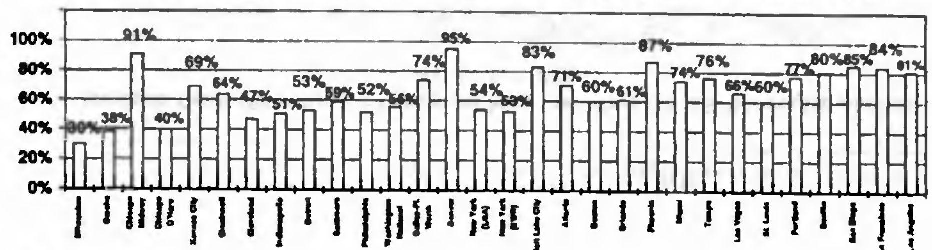
Source: DOT Databank 1a

The Vast Majority of Northwest's Minneapolis Originating Traffic Flies on NW's Economical "Every Day Deals" Fares -- or Lower . . .

"Every Day Deals" Fares (One Way) for Travel From Minneapolis/St. Paul to Top 30 U.S. Origin-Destination Markets (4th Qtr 1997)



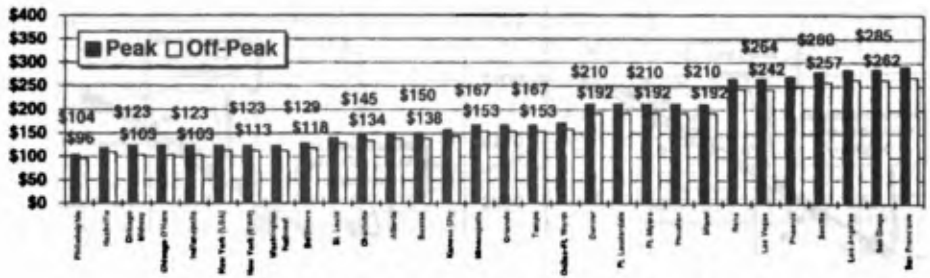
Percentage of Origin-Destination Traffic at Peak "Every Day Deals" Fares or Below



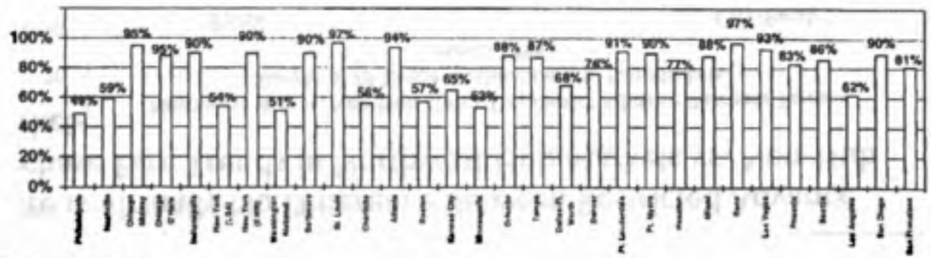
Source: Northwest Revenue Data

. . . as does the Vast Majority of Northwest's Detroit Originating Traffic

"Every Day Deals" Fares (One Way) for Travel From Detroit to Top 30 U.S. Origin-Destination Markets (4th Qtr 1997)



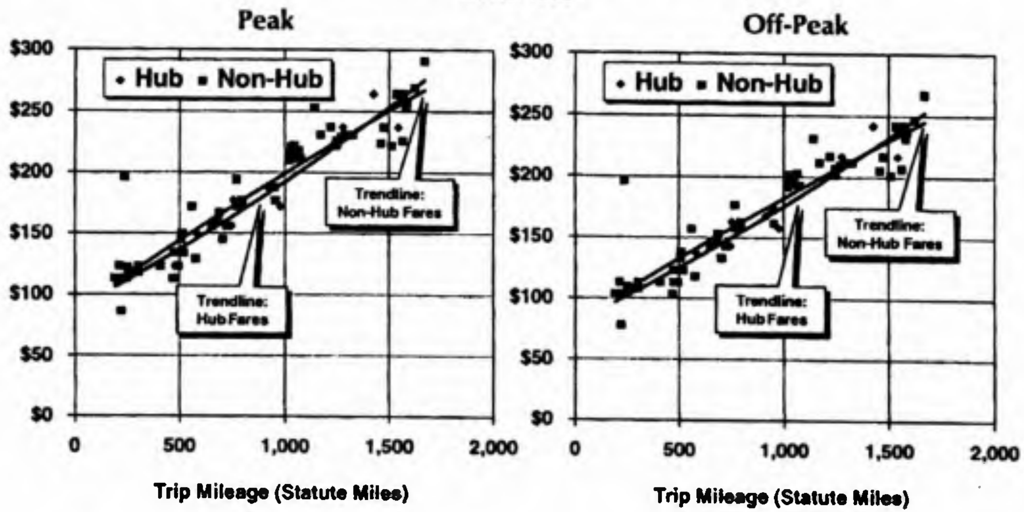
Percentage of Origin-Destination Traffic at Peak "Every Day Deals" Fares or Below



Source: Northwest Revenue Data

There is Virtually No Difference Between Restricted Advance Purchase Fare Trends in Northwest Hub Markets vs. Non-Hub Markets

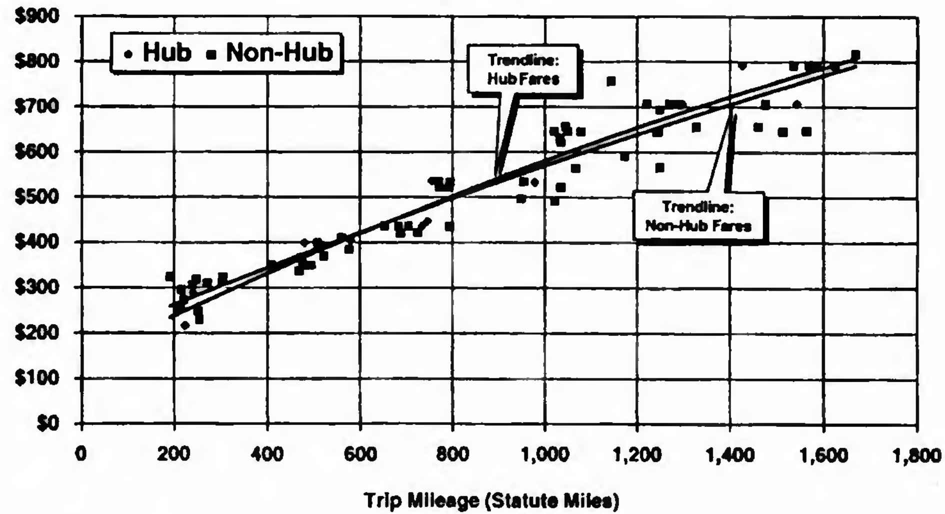
Northwest Hub vs. Non-Hub "Every Day Deals" Advance Purchase Fares
Sample of 78 Origin-Destination City-Pair Markets
March 1998



Hub City-Pair Markets: Where Either the Origin or Destination is at Northwest's MSP or DTW Hub.
Non-Hub City-Pair Markets: Where Both the Origin and Destination Cities are Spokes.
Source: Northwest Airlines Domestic Pricing

There is Virtually No Difference Between Unrestricted Fare Trends in Northwest Hub Markets vs. Non-Hub Markets

Northwest Hub vs. Non-Hub Unrestricted Fares
Sample of 78 Origin-Destination City-Pair Markets
March 1998



Hub City-Pair Markets: Where Either the Origin or Destination is at Northwest's MSP or DTW Hub.
Non-Hub City-Pair Markets: Where Both the Origin and Destination Cities are Spokes.
Source: Northwest Airlines Domestic Pricing

Competition, Fares and Value
at Hub Cities and Beyond

Fares at Smaller Cities With a High Northwest Presence

Very Reasonable Peak "Every Day Deals" Advance Purchase Airfares are Widely Available at Smaller U.S. Cities Where Northwest Has a Majority Presence

Peak Every Day Deals Fares, March 1998

Origin	Atlanta	Boston	Chicago	Denver	Dallas/Ft. Worth	Houston	Las Vegas	Los Angeles	New York	Orlando	Phoenix	Seattle	San Francisco	Wash. D.C.
Aberdeen	$218	$298	$187	$218	$221	$226	$268	$275	$207	$258	$293	$290	$260	$221
Watertown	$188	$253	$181	$204	$194	$199	$231	$240	$221	$231	$226	$253	$240	$194
Benton Harbor	$118	$172		$177	$177		$258	$280	$134	$187	$221	$264	$278	$140
Bismarck	$237	$248	$187	$138	$210	$231	$221	$237	$231		$221	$221	$237	$231
Bemidji	$223	$240	$159	$207	$207	$245	$281	$290	$218	$240	$281	$267	$294	$202
Brainerd	$223	$240	$159	$207	$207		$261	$290	$213	$240	$251	$267	$294	$202
Hancock	$166	$206	$129	$212	$201	$220	$300	$283	$217	$244	$268	$300	$287	$201
Duluth	$223	$240	$158	$207	$207	$245	$261	$290	$213	$240	$251	$267	$264	$202
Eau Claire	$208	$275	$144		$159		$246	$294	$198	$225	$236	$252	$278	$187
Escanaba	$181	$181		$187	$188	$213	$294	$278	$202	$229	$254		$272	$188
Fargo	$221	$248	$183	$145	$210		$248	$227	$221	$258	$248	$231	$237	$221
Ft Dodge	$166	$225	$144	$204	$177		$214	$241	$225	$220	$231	$241	$274	$182
Grand Forks	$231	$256	$193	$155	$220		$288	$247	$231	$268	$258	$241	$247	$231
Greenville	$145	$221	$148		$145	$150	$253	$285	$188	$172	$253	$291	$291	$188
Grand Rapids	$223	$240	$156	$207	$207	$245	$281			$240	$251	$267	$264	$202
Green Bay	$141	$192		$183	$167		$275	$258	$140	$215	$237	$278	$253	$187
Hibbing	$223	$240	$159	$207	$207		$261	$290	$213	$240	$251	$267	$264	$202
Int'l Falls	$233		$188	$217	$217	$256	$271	$308	$223	$250	$261	$277	$304	$212
La Crosse	$145	$199	$113	$188	$188	$226	$248	$280	$194	$226	$237	$240	$264	$188
Saginaw	$156	$140	$113	$215	$177	$210	$253	$280	$145	$198	$253	$204	$265	$123
Mason City	$181	$226	$118	$190	$172	$198	$215	$242	$226	$218	$226	$242	$280	$183
Muskegon	$134	$130		$226	$188	$270	$268	$280	$134	$188	$280	$280	$280	$134
Jackson, TN	$150	$226	$148	$210	$150	$158	$258	$291	$194	$177	$258	$296	$296	$194
Minot	$242	$258	$177	$181	$188	$242	$231	$248	$242	$264	$231	$218	$242	$242
Marquette	$161	$201	$129	$128	$196	$223	$304	$280	$212	$230	$264	$304	$282	$188
Florence	$134	$194	$150	$242	$188	$188	$285	$291	$194	$177	$231	$280	$265	$183
Owensboro	$137	$188	$118	$237	$181	$172	$288	$265	$145	$181	$264	$266	$280	$140
Paducah	$140	$221	$140	$188	$140	$145	$248	$285	$183	$172	$248	$266	$265	$183
Laurel Pine Belt	$181	$242	$210	$253	$150	$113	$256	$291	$226	$177	$258	$291	$296	$188
Pierre	$218	$280	$167	$215	$221	$226	$258	$275	$257	$242	$253	$280	$269	$221
Pellston	$147	$142	$118	$233	$178	$233	$277	$293	$147	$212	$277	$293	$293	$147
Rockford	$150	$172		$194	$156	$172	$275	$258	$140	$188	$221	$280	$291	$181
Rhinelander	$151	$191	$118	$197	$198	$213	$284	$278	$202	$220	$254	$294	$272	$188
Rochester, MN	$177	$218	$118	$183	$132	$221	$241	$258	$132	$218	$228	$231	$258	$172
St. Cloud	$208	$225	$144	$192	$192	$230	$246	$264	$198	$224	$238	$252	$279	$187
Sioux City		$241	$150	$132	$182	$187	$220	$236	$200	$220	$214	$241	$226	$182
Tupelo	$118	$204	$181	$253	$156	$188	$258	$302	$204	$188	$242	$294	$296	$194
Traverse City	$140	$134	$107	$226	$172	$226	$288	$285	$140	$204	$288	$265	$265	$140
Thief River Falls	$237	$264	$199	$181	$226	$240	$264	$253	$237	$275	$264	$248	$253	$237
Average	$179	$216	$150	$200	$187	$208	$258	$275	$198	$218	$247	$268	$275	$188

Source: Northwest Domestic Pricing

Even Lower Prices Are Available at These Small Cities With *Off-Peak* "Every Day Deals" Fares

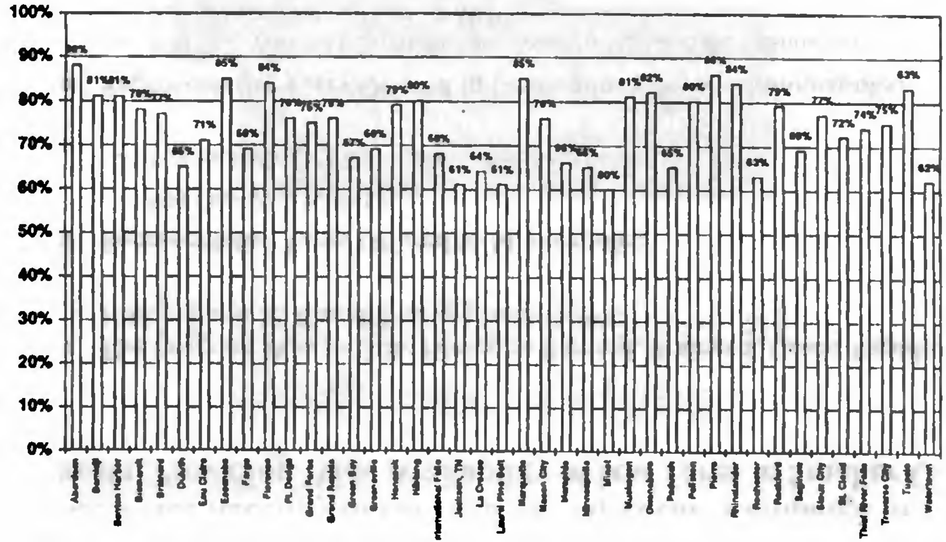
Off-Peak Every Day Deals Fares, March 1998

Origin	Atlanta	Boston	Chicago	Denver	Dallas/Ft. Worth	Houston	Las Vegas	Los Angeles	New York	Orlando	Phoenix	Seattle	San Francisco	Washington
Aberdeen	$187	$257	$152	$197	$202	$207	$237	$252	$235	$237	$232	$257	$247	$202
Watertown	$173	$232	$148	$187	$177	$182	$212	$227	$202	$212	$209	$232	$227	$177
Benton Harbor	$108	$158		$181	$183		$237	$257	$183	$152	$262	$242	$252	$128
Bismarck	$217	$227	$183	$127	$198	$212	$202	$217	$212		$202	$202	$217	$212
Bemidji	$207	$222	$148	$183	$193	$227	$242	$277	$198	$222	$232	$247	$272	$188
Brainerd	$207	$222	$148	$183	$193		$242	$277	$188	$222	$232	$247	$272	$188
Hancock	$138	$183	$115	$198	$188	$213	$267	$272	$203	$237	$281	$267	$267	$188
Duluth	$207	$222	$148	$193	$183	$227	$242	$277	$198	$222	$232	$247	$273	$198
Eau Claire	$182	$207	$123		$178		$227	$268	$162	$207	$217	$232	$257	$173
Escanaba	$141	$178		$183	$173	$188	$272	$257	$188	$212	$236		$252	$173
Fargo	$208	$227	$168	$133	$192		$227	$217	$202	$237	$227	$212	$217	$208
Ft. Dodge	$153	$207	$133	$187	$163		$197	$222	$207	$202	$212	$222	$258	$198
Grand Forks	$218	$237	$177	$143	$202		$237	$267	$212	$247	$237	$222	$227	$218
Greenville	$133	$202	$128		$133	$138	$232	$262	$173	$188	$232	$267	$267	$173
Grand Rapids	$207	$222	$148	$183	$193	$227	$242			$222	$232	$247	$272	$188
Green Bay	$128	$188		$188	$152		$232	$237	$138	$197	$217	$252	$232	$152
Hibbing	$207	$222	$148	$183	$193		$242	$277	$188	$222	$232	$247	$277	$188
Int'l Falls	$217		$158	$203	$203	$237	$252	$267	$208	$238	$248	$247	$277	$188
La Crosse	$133	$152	$183	$173	$175	$207	$277	$267	$177	$207	$217	$257	$262	$198
Saginaw	$143	$178	$102	$187	$163	$192	$232	$267	$138	$173	$232	$242	$262	$113
Mason City	$148	$207	$108	$182	$158	$173	$197	$222	$207	$197	$207	$222	$247	$168
Muskegon	$123	$128		$207	$188	$202	$246	$267	$123	$182	$247	$257	$257	$123
Jackson, TN	$138	$207	$133	$192	$138	$188	$237	$267	$177	$163	$237	$273	$257	$123
Minot	$222	$237	$163	$148	$192	$222	$212	$287	$222	$248	$237	$273	$272	$177
Marquette	$191	$188	$110	$118	$163	$208	$262	$267	$198	$222	$248	$197	$222	$252
Florence	$123	$177	$138	$222	$173	$173	$252	$267	$177	$163	$212	$262	$262	$183
Owensboro	$125	$173	$108	$217	$148	$158	$247	$262	$138	$148	$262	$262	$257	$128
Paducah	$138	$202	$138	$182	$138	$133	$227	$252	$188	$158	$262	$262	$257	$128
Laurel Pine Belt	$148	$222	$152	$252	$138	$103	$237	$267	$207	$183	$227	$262	$262	$198
Pierre	$187	$257	$153	$187	$202	$207	$237	$252	$236	$237	$238	$257	$247	$202
Pellston	$138	$131	$138	$215	$188	$218	$254	$260	$135	$186	$264	$260	$260	$138
Rockford	$138	$198		$177	$149	$158	$258	$237	$128	$173	$202	$257	$207	$148
Rhinelander	$141	$178	$188	$183	$173	$188	$272	$257	$198	$212	$236	$273	$252	$173
Rochester, MN	$163	$187	$198	$188	$198	$202	$222	$237	$198	$187	$207	$212	$237	$158
St. Cloud	$192	$207	$133	$178	$178	$212	$227	$262	$183	$207	$217	$238	$257	$173
Sioux Falls		$222	$138	$177	$198	$173	$202	$217	$192	$202	$197	$222	$207	$188
Tupelo	$198	$187	$148	$232	$143	$182	$272	$276	$187	$173	$272	$273	$272	$177
Traverse City	$128	$123	$98	$207	$198	$207	$247	$262	$128	$187	$247	$262	$262	$128
Thief River Falls	$217	$242	$182	$148	$207	$227	$242	$282	$217	$252	$242	$207	$232	$217
Grand Total	$168	$198	$138	$184	$173	$183	$239	$264	$169	$198	$227	$246	$253	$174

Source: Northwest Domestic Pricing

These Low "Every Day Deals" Fares Are Not Limited to Only a Few Seats; Rather, They are Purchased by <u>Most</u> of the Passengers Traveling To or From These Smaller Cities

Percentage of Origin-Destination Passengers at Northwest's High Share Airports Purchasing Peak "Every Day Deals" Fares or Below (4th Qtr 1997)



Source: Northwest Revenue Data. Airports Where Northwest Carries 50% or More of Origin-Destination Passengers

Northwest Has Recently Introduced its "Fly Local" Campaign in Minnesota, Providing Wide Availability of Low Fares in Smaller Cities

- **The Program Was Initially Piloted in Bemidji, Brainerd, Grand Rapids, Hibbing and St. Cloud, Starting in Mid-1997**
- **Representative Fares Offered to Minneapolis:**
  - $99 One-Way Walk-Up
  - $69 Each Way, 21 Day Advance Purchase Excursion
- **Representative Fares Offered to Destinations Beyond Minneapolis:**
  - $30 One-Way Add-On to the Fare Between MSP and the Destination, For Any Connecting Flights at MSP
- **Northwest is Evaluating the Possibility of Expanding the "Fly Local" Program to Other Cities**

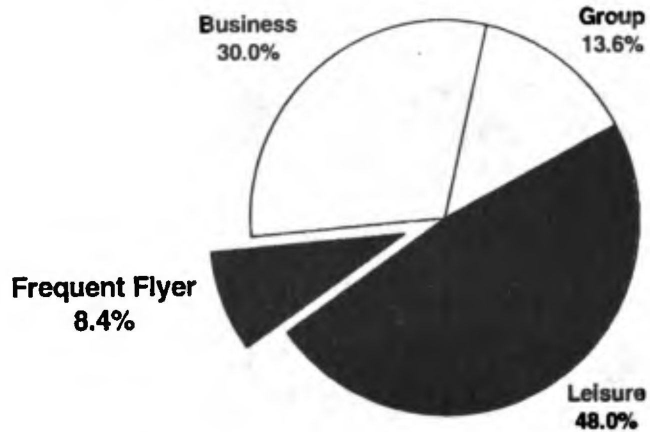
Source: Northwest

Competition, Fares and Value
at Hub Cities and Beyond

Frequent Flyer Travel at Northwest's Hubs

More Than 8% of Northwest's Originating Passengers at Minneapolis/St. Paul Travel on Free Reward Tickets from Our World Perks Frequent Flyer Program

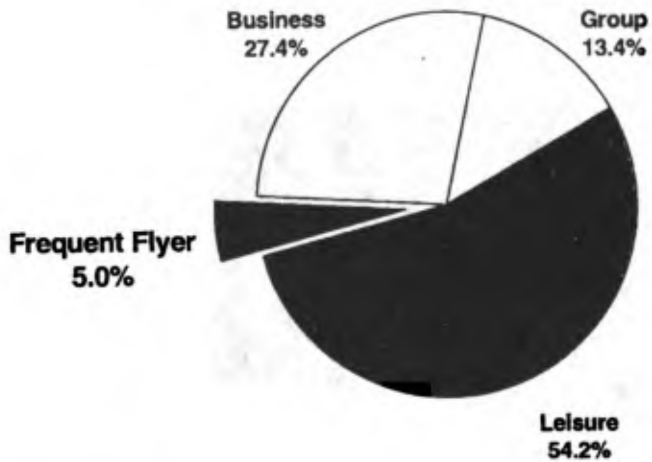
Minneapolis/St. Paul Passenger Mix
(October 1997)



Source: Northwest Airlines Revenue Accounting Data.

In Detroit, Five Percent of Northwest's Originating Passengers Are Traveling on World Perks Reward Tickets

Detroit Passenger Mix
(October 1997)



Source: Northwest Airlines Revenue Accounting Data.

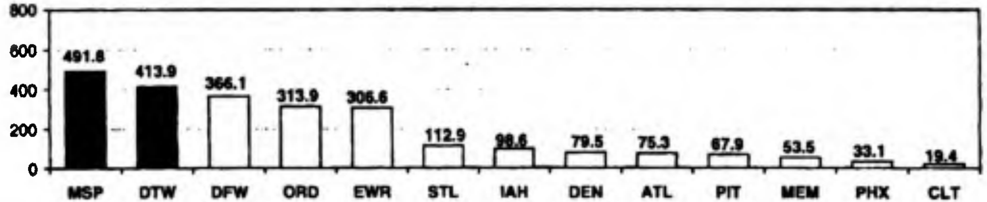
Competition, Fares and Value
at Hub Cities and Beyond

Charter Fares at Northwest's Hubs

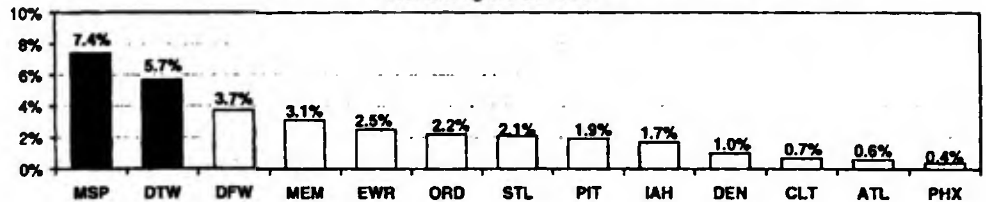
Minneapolis St. Paul and Detroit are Two of the Country's Largest Charter Origin Markets, and Board a Significantly Higher Proportion of Charter Passengers than Most Other U.S. Hub Airports

Charter Passengers Are Estimated to Represent More than 7% of U.S. Carrier Origin-Destination Passengers at Minneapolis/St. Paul, and Nearly 6% at Detroit Metro

Total U.S. Carrier Charter Passenger Enplanements
Year Ending 3rd Qtr 1997 (Thousands)



Charter Passengers as Share of Total Airport U.S. Carrier Origin-Destination Passengers
Year Ending 3rd Qtr 1997



Sources: U.S. DOT Form 41/t3 Airport Statistics (Charter Enplanements); U.S. DOT Origin-Destination Survey via Database Products, (Scheduled Origin-Destination Passengers); USDOT, T1C Commuter Database

Reduced Charter Fares are Available to More than 70 Destinations from Minneapolis/St. Paul . . .

Northwest Actively Participates in the Minneapolis Charter Market via Its MLT and World Vacation Subsidiaries

In 1997 They Carried Nearly 250,000 Passengers from MSP to Over 55 Destinations

Minneapolis Charter Routes
1998

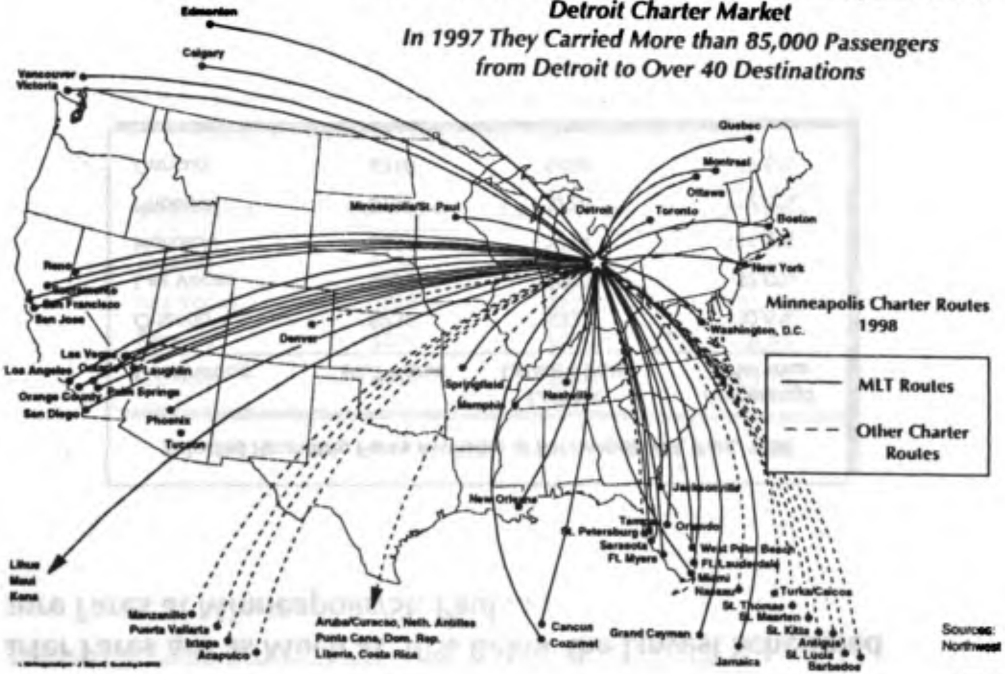
———	MLT Routes
- - -	Other Charter Routes

Sources: Northwest

. . . and More than 60 Destinations from Detroit

MLT and World Vacations are Also Active Participants in the Detroit Charter Market

In 1997 They Carried More than 85,000 Passengers from Detroit to Over 40 Destinations



Sources: Northwest

Charter Fares are as Much as 50% Below the Lowest Scheduled Leisure Fares at Minneapolis/St. Paul . . .

Selected Roundtrip Fares Available at Minneapolis/St. Paul, 1998

Destination	MLT Fares	Lowest Leisure Fare	Percentage Difference
Orlando	$231	$333	-30.6%
Las Vegas	$208	$306	-32.0%
Honolulu	$581	$774	-24.9%
Phoenix	$197	$226	-12.8%
Cancun	$318	$630	-49.5%

Lowest Leisure Fare Based on Roundtrip, 21-Day Advance Purchase, Weekend Stayover (Between April 15 and April 22, 1998)

Sources: Northwest (MLT Fares); Travelocity.com (Lowest Leisure Fares)

. . . and as Much as 40% Below the Lowest Scheduled Leisure Fares at Detroit Metro

Selected Roundtrip Fares Available at Detroit Metro, 1998

Destination	MLT Fares	Lowest Leisure Fare	Percentage Difference
Orlando	$136	$221	-38.5%
Las Vegas	$228	$326	-30.1%
Phoenix	$233	$366	-36.3%
Cancun	$415	$590	-29.7%

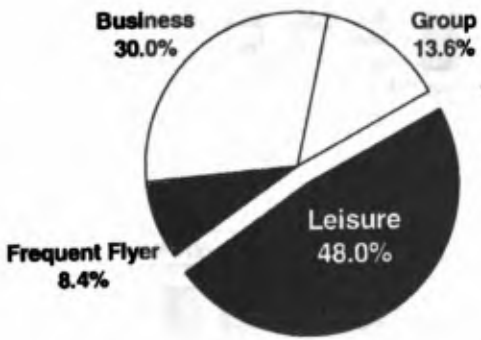
Lowest Leisure Fare Based on Roundtrip, 21-Day Advance Purchase, Weekend Stayover (Between April 15 and April 22, 1998.)
Sources: Northwest (MLT Fares); Travelocity.com (Lowest Leisure Fares)

Competition, Fares and Value
at Hub Cities and Beyond

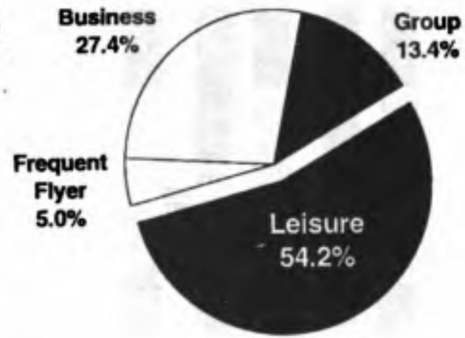
Leisure Fares at Northwest's Hubs

Leisure Passengers Represent the Largest Part of Northwest's Minneapolis/St. Paul and Detroit Business

Minneapolis/St. Paul Passenger Mix
(October 1997)



Detroit Passenger Mix
(October 1997)

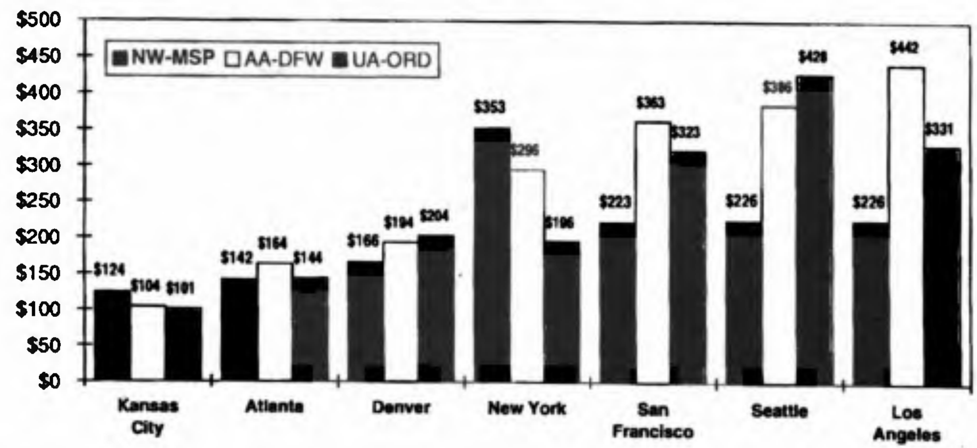


Northwest Introduced "Every Day Deals" in September 1997, Offering Consumers Affordable Travel Without Waiting for a Sale. Nonetheless, Northwest Has Had Four Domestic-Wide Fare Sales Between September 1997 and March 1998.

Source: Northwest Airlines Revenue Accounting Data.

Northwest's Lowest Leisure Fares from Minneapolis/St. Paul are Similar to Other Airlines' Lowest Leisure Fares from Other Hubs, on Routes of Similar Length

Roundtrip Leisure Fares, at Minneapolis vs. Other Hub Cities
April 1998

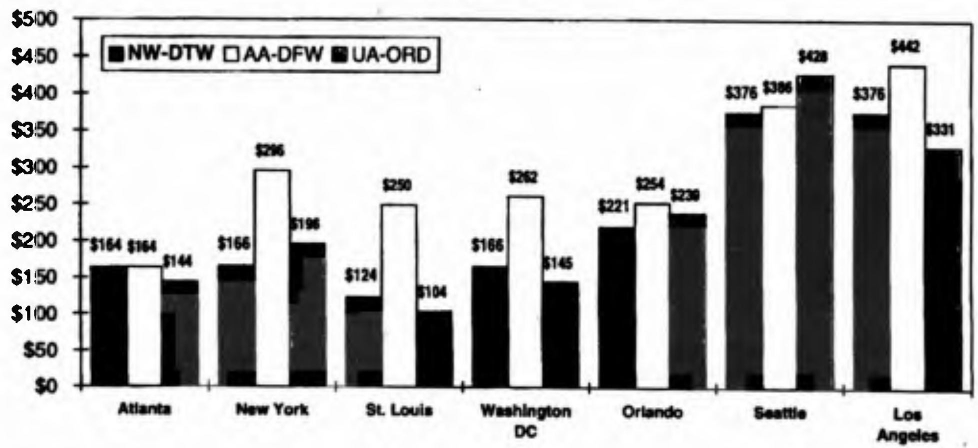


Lowest Leisure Fare Based on Roundtrip, 21-Day Advance Purchase, Weekend Stayover (Between April 15 and April 22, 1998.)
New York = LGA, EWR or JFK
Washington DC = IAD or DCA

Source: Travelocity.com

Northwest's Lowest Leisure Fares from Detroit are Similar to Other Airlines' Lowest Leisure Fares from Other Hubs, on Routes of Similar Length

Roundtrip Leisure Fares at Detroit vs. Other Hub Cities
April 1998



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Washington DC = IAD or DCA

Source: Travelocity.com

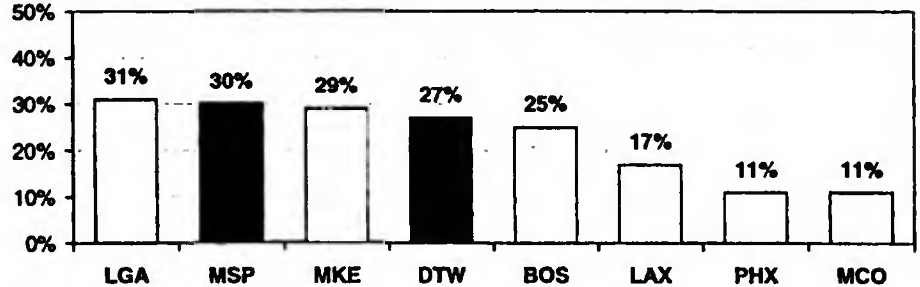
Competition, Fares and Value
at Hub Cities and Beyond

Business Fares at Northwest's Hubs

Minneapolis and Detroit Both Have a High Proportion of Unrestricted "Business" Ticket Purchases Compared to Many Other Cities, Due to the High Concentration of Corporate Headquarters Nearby

The High Percentage of Business Fares Purchased Tends to Skew Average Fares Upward

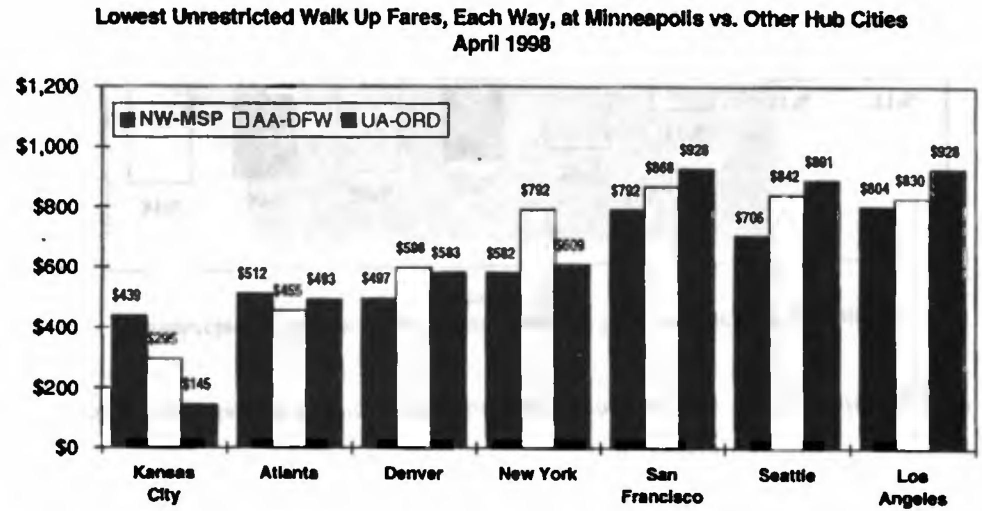
Unrestricted Ticket Purchases as Percentage of Total Originating Passengers
(October, 1997)



Business Fares Tend to be Higher than Other Fares, Due to Business Travelers' Need for Flexible Travel Options. To Support Business Travelers, Airlines Must Hold Seats Open Until the Last Minute, Incurring Additional Expense

Source: Northwest

Nonetheless, Unrestricted "Walk-Up" Fares at Minneapolis/St. Paul Are Similar to Other Airlines' "Walk-Up" Fares on Major Hub Routes of Similar Length

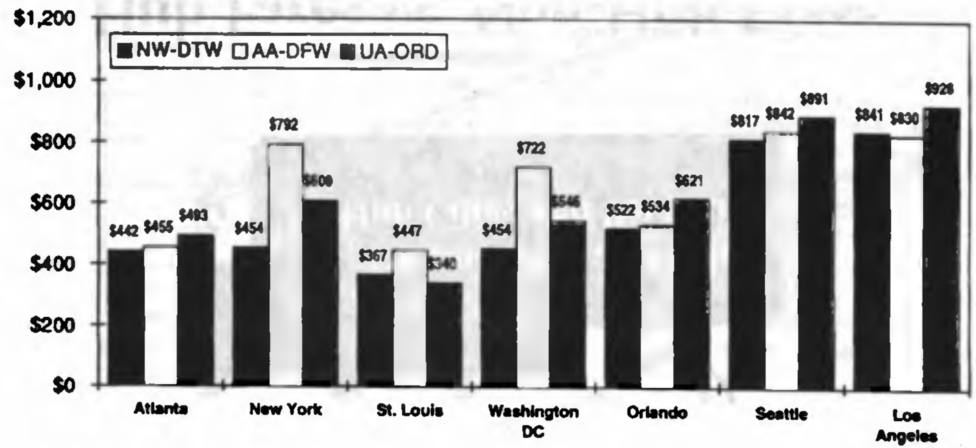


Lowest Unrestricted Fares for Outbound Travel on Wednesday, April 15, 1997, and Return on Friday, April 17.
New York = LGA, EWR or JFK
Washington DC = IAD or DCA

Source: Travelocity.com

Unrestricted "Walk-Up" Fares at Detroit Metro Also are Very Close to Other Airlines' "Walk-Up" Fares to Major Destinations

Lowest Unrestricted Walk Up Fares, Each Way, at Detroit vs. Other Hub Cities
April 1998



Lowest Unrestricted Fares for Outbound Travel on Wednesday, April 15, 1997, and Return on Friday, April 17.
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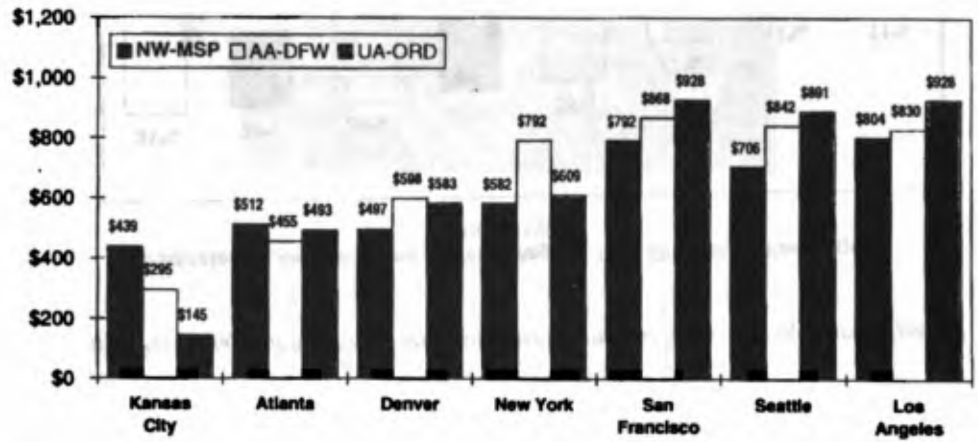
April 1998



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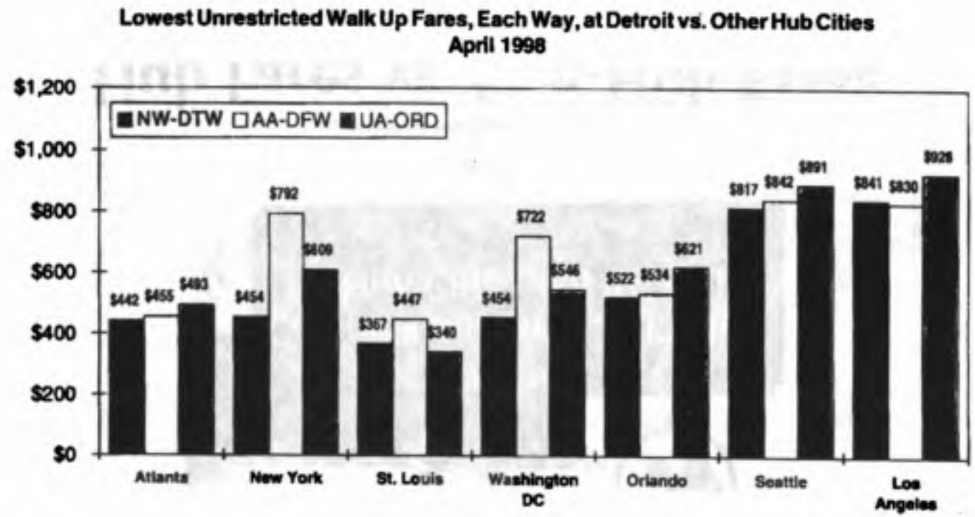

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New York = LGA, EWR, or JFK
Washington DC = IAD or DCA

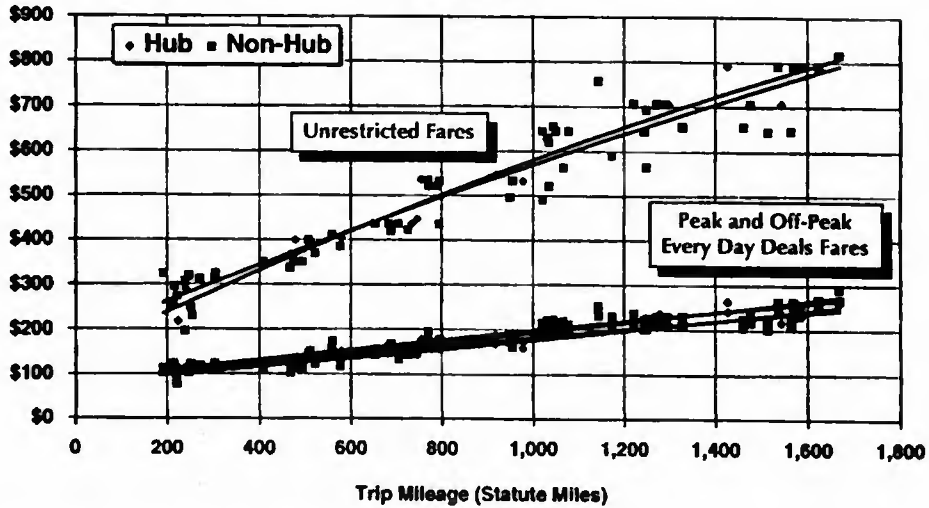
Source: Travelocity.com

Competition, Fares and Value
at Hub Cities and Beyond

Hub Fares vs. Non-Hub Fares

As Indicated Previously, There is Little Difference in Fare Trends in Northwest's Hub Markets Compared to Its Non-Hub Markets

Northwest Hub vs. Non-Hub Fares
Sample of 78 Origin-Destination City-Pair Markets
March 1998



Hub City-Pair Markets: Where Either the Origin or Destination is at Northwest's MSP or DTW Hub.
Non-Hub City-Pair Markets: Where Both the Origin and Destination Cities are Spokes.
Source: Northwest Airlines Domestic Pricing

All Else Being Equal, However, Yields (Revenue per Passenger Mile) at Hubs May be Somewhat Higher than at Non-Hubs

- **Average Trip Distances Are Shorter:**
  - Fixed Departure and Arrival Costs Account for a Higher Share of Total Costs on Short Trips, Resulting in Higher Yields
- **Originating Passengers Require Fewer Connections:**
  - Hubs Offer a Large Availability of Nonstop Destinations
  - Fares for Connecting Flights Tend to be Lower Than Fares for Nonstop Flights, to Compensate for the Less Convenient Service

Domestic Yields, Year Ending 3rd Qtr 1997

Average Hub Yield	Average Non-Hub Yield	Percent Difference
$0.1620	$0.1419	14.2%

Source: U.S. DOT, Databank 1a. Yields are for Travel Only in the Continental U.S.

Locally-Originating Passengers at Interior Hub Cities Take Shorter Trips on Average Than Passengers Originating at Non-Hubs

Most North American Connecting Hubs are Located at Interior Locations in Close Proximity to Several High Density Cities, Minimizing Average Trip Distance

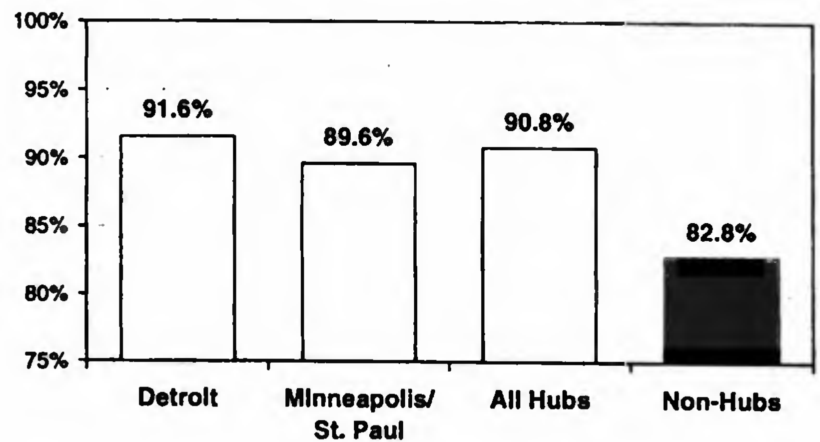
Average Domestic Trip Distance for O&D Passengers
Year Ending 3rd Qtr 1997 (Statute Miles)

	Originating Psgrs. at NW Hubs	O&D Psgrs. To and From Non-Hub Cities	Percentage Difference
Detroit	901	1,005	-10.3%
Minneapolis	944		-6.1%

Source: U.S. DOT Databank 1a via Database Products; Trip Distances Are For Domestic Travel Only Within the Continental 48 States.

Passengers Flying from Hubs Require Fewer Connections than Passengers Traveling from Non-Hubs, Since Hubs Offer Frequent Nonstop Services to Many Destinations

Percentage of Locally-Originating Domestic Passengers on Nonstop or Direct (Single Coupon) Flights
Year Ending 3rd Qtr 1997



Source: U.S. DOT DB2c for Travel Within the Continental U.S. Only

Competition, Fares and Value
at Hub Cities and Beyond

Hub Value

Hubs Offer Tremendous Value to Local Communities

- Fares are Just One Component of a Hub's Economic Impact on Local Communities. Additional Factors to Consider are:
  - Convenience
  - International Routes
  - Economic Impact
  - Costs

"Being the service center of a network results in far more service for the hub city than it would otherwise enjoy."

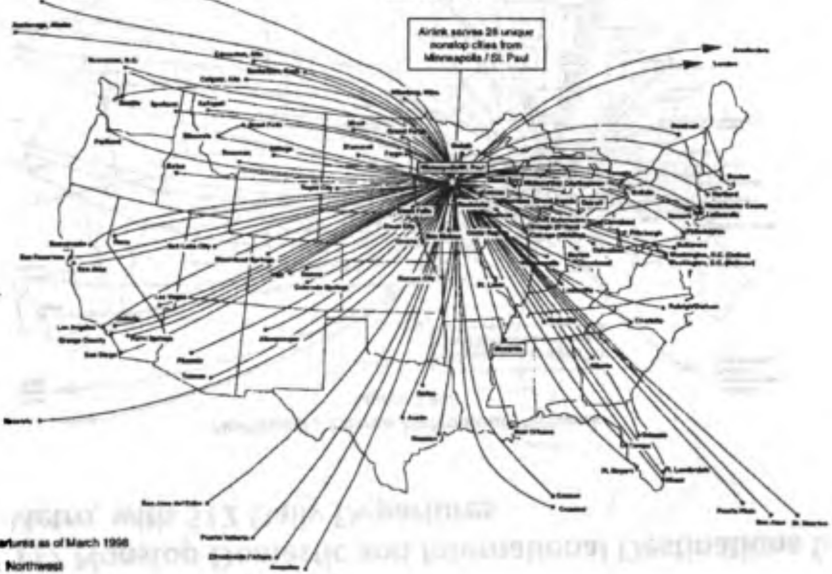
"Indeed, every review of objective evidence -- by the Department (of Transportation), The Brookings Institution, the Transportation Research Board of the National Research Council, the GAO and a host of independent studies--has concluded that overall the network-dominated domestic system provides superior, competitive service."

Secretary of Transportation, US Department of Transportation, May 1996

Northwest and Northwest Airlink Now Serve a Total of 134 Nonstop Domestic and International Destinations from Minneapolis/St. Paul, with 487 Daily Departures . . .

Northwest's Minneapolis/St. Paul Route Network

March 1998



Jet departures as of March 1998

Source: Northwest

. . . and 117 Nonstop Domestic and International Destinations from Detroit Metro, with 512 Daily Departures

Northwest's Detroit Metro Route Network

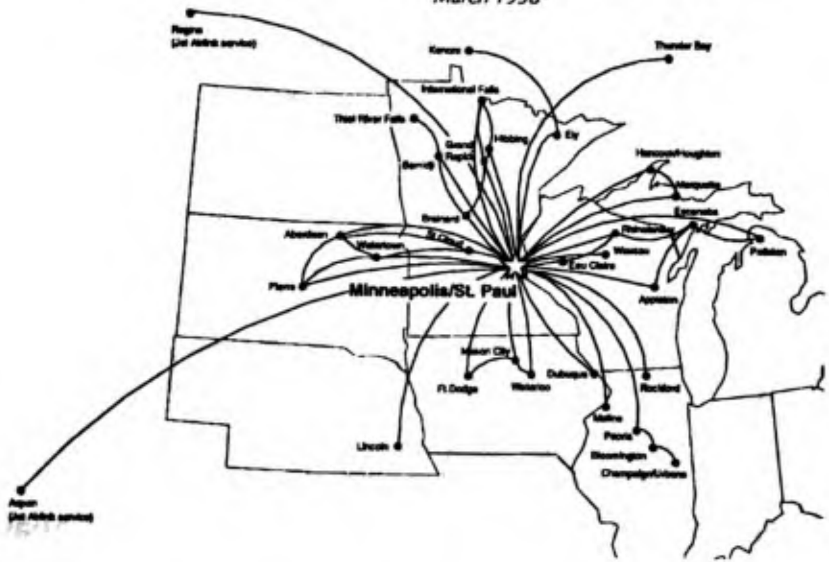
March 1998

Source: Northwest

Northwest Airlink Alone Serves 33 Cities and Towns from Minneapolis/St. Paul – 28 of Them Nonstop – with 155 Daily Departures

Northwest Airlink Minneapolis/St. Paul Network

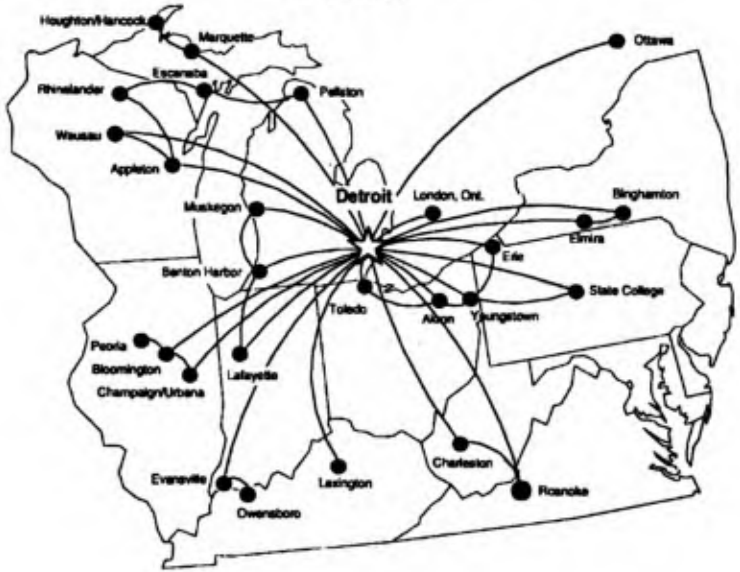
March 1998



Source: Northwest

Northwest Airlink Also Serves 27 Cities and Towns from Detroit Metro – 22 of Them Nonstop – with 135 Daily Departures

Northwest Airlink Detroit Metro Network
March 1998



Source: Northwest

Northwest Has Dramatically Grown Its Hubs Since 1990

At Minneapolis/St. Paul, Northwest Has:

- Increased Domestic Seats Offered by 27%
- Increased International Seats Offered by 260%
- Increased Total Seats Offered by 34%

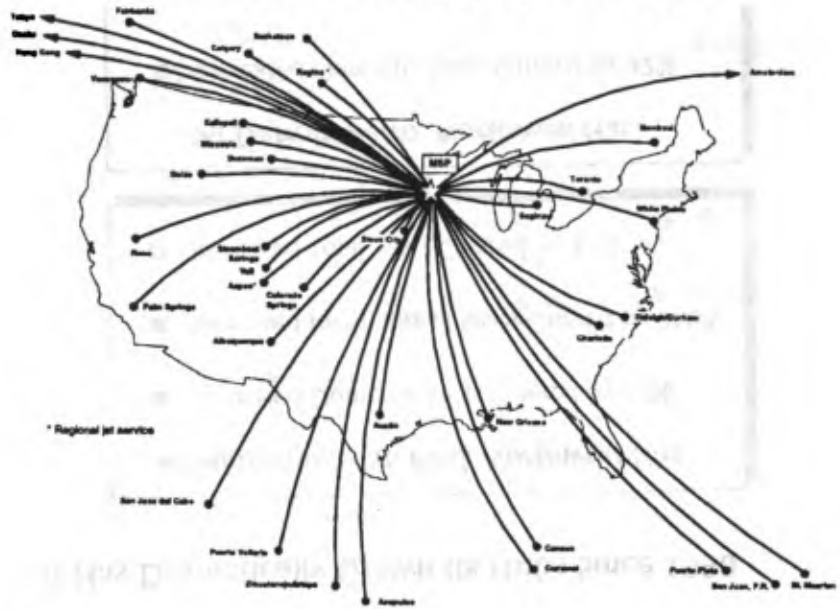
At Detroit Metro, Northwest Has:

- Increased Domestic Seats Offered by 42%
- Increased International Seats Offered by 84%
- Increased Total Seats Offered by 45%

Source: OAG Schedule Tapes, Aug. 1990 vs. Aug. 1997; Northwest as Reporting Carrier

Since 1992, Northwest Has Initiated Nonstop Service to 38 New Destinations from Minneapolis/St. Paul . . .

New Destinations Added from Minneapolis/St. Paul Since 1992

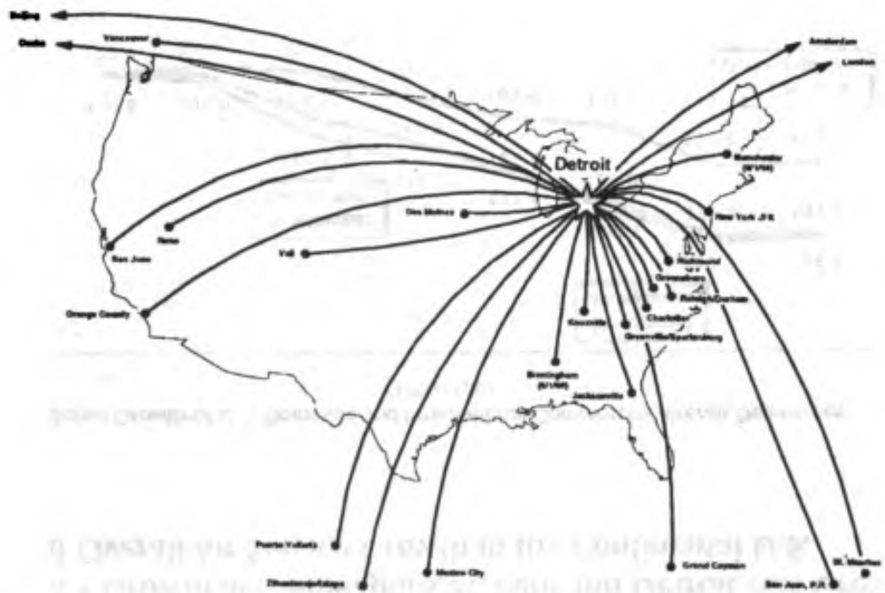


* Regional jet service

Source: Northwest

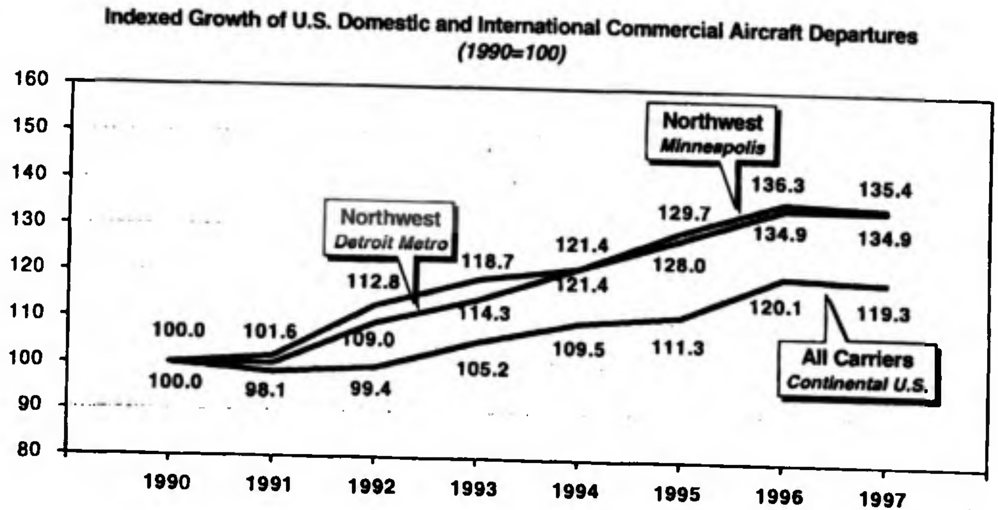
. . . and 26 New Destinations from Detroit Metro

New Destinations Added from Detroit Metro Since 1992



Source: Northwest

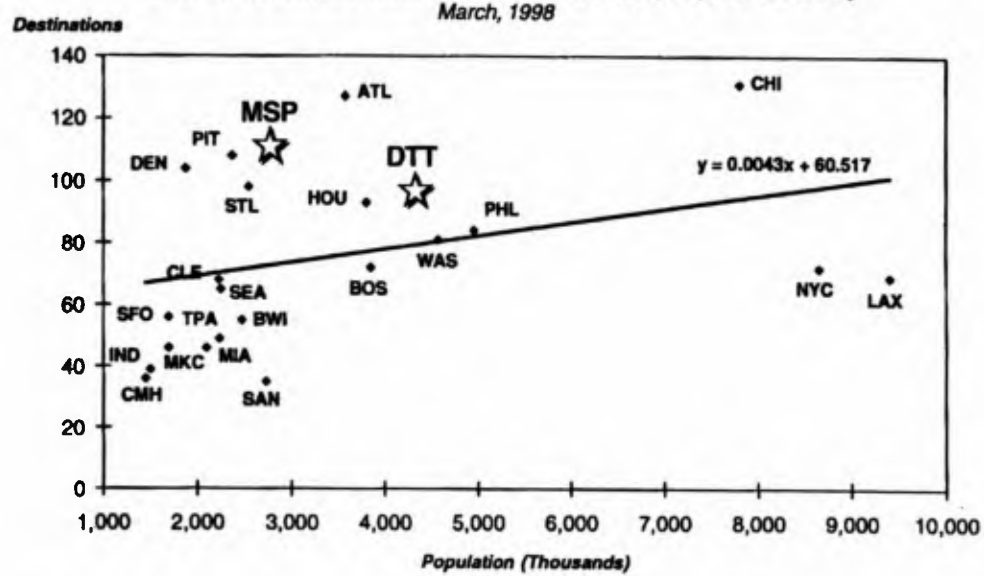
Northwest's Growth at Minneapolis/St. Paul and Detroit Has Greatly Surpassed Overall Air Service Growth in the Continental U.S.



Source: US DOT, Form 41/T3 Statistics

Both Minneapolis and Detroit Exceed the Number of Predictable Nonstop Destinations Offered for Cities of Their Size

Number of Nonstop Domestic Destinations Offered, by Population Density
March, 1998



Source: OAG Schedule Tapes; Sales & Marketing Management (1996 Population). Domestic Destinations Within the Continental U.S. Only.

Northwest's Direct Spending in Minnesota Exceeded $2 Billion in 1996

Northwest Employs Nearly 20,000 People in Minnesota, and Pays $1.3 Billion in Wages and Benefits

Northwest Airlines Direct Spending In Minnesota (Thousands of Dollars)

Item	Cost
Wages & Benefits	$1,279,739
Fuel & Oil	$202,561
Food, Beverage & Catering	$38,538
Communications & Utilities	$78,982
Other Services	$355,524
Office/Crew/Airport Rentals	$32,590
Landing Fees	$15,872
State and Local Taxes	$27,237
Other Supplies	$51,078
Total Operating Expenses	**$2,082,121**
Facilities	$9,119
Equipment	$16,116
Total Capital	**$25,235**
Total State Expenses	**$2,107,356**

Note: Excludes Maintenance Materials
Source: Northwest

Northwest's Direct Spending in Michigan Exceeded $1.2 Billion in 1996

Northwest Employs More Than 10,000 People in Michigan, and Pays $700 Million in Wages and Benefits

Northwest Airlines Direct Spending in Michigan (Thousands of Dollars)

Item	Cost
Wages & Benefits	$672,978
Fuel & Oil	$220,328
Food, Beverage & Catering	$36,091
Communications & Utilities	$6,998
Other Services	$174,659
Office/Crew/Airport Rentals	$20,479
Landing Fees	$38,456
State and Local Taxes	$29,943
Other Supplies	$15,792
Total Operating Expenses	**$1,215,754**
Facilities	$1,937
Equipment	$978
Total Capital	**$2,915**
Total State Expenses	**$1,218,669**

Note: Excludes Maintenance Materials
Source: Northwest

57-743 99 - 6

Northwest's Hub Airports Each Contribute Billions of Dollars Each Year in Total Economic Impact to Their Surrounding Regions

- **The Minneapolis/St. Paul Airport Commission (MAC) Estimates That the Minneapolis/St. Paul Airport Contributes $5.5 Billion Annually in Total Economic Impact to Minnesota**

- **The Detroit Metro Airport is Estimated to Contribute Approximately $3 Billion Each Year in Total Economic Impact to Southeastern Michigan**

- **Each Hub Provides Significant Indirect and Induced Economic Benefits, Such as Attracting Convention Business and International Visitors to the Region**
  - The MAC Study Estimates That Each International Flight to Europe or Asia Provides $300-$500 Million in Economic Benefits Each Year

- **If Northwest Did Not Have Its Hubs in Minneapolis or Detroit, Our Local Spending and Employment Would Resemble That of Our Spoke Cities:**
  - Northwest Would Employ About 70 People
  - Northwest's Total Direct Spending in Michigan Would Be Under $20 Million

Source: Northwest; Detroit Wayne County Airport

Competition, Fares and Value
at Hub Cities and Beyond

Hub Costs

A Vibrant Hub Requires a Complex and Expensive Fleet

Northwest Serves Diverse Markets, Ranging From Tokyo to Duluth.
No Low-Cost Operator Would be Able to Provide This Service.

Aircraft Type	Number in NW Fleet	Seats	Flight Range (Nautical Air Miles)	Markets Commonly Served from MSP or DTW
747	43	369	5,780	Tokyo, Amsterdam
DC-10-30/40	37	281-285	3,900-5,165	London, Los Angeles, Frankfurt, Paris, Honolulu
757	48	190	3,030	Portland, Miami, Phoenix, Las Vegas
A-320	56	150	2,575	New York, Washington DC, Seattle, San Diego, Miami
727	40	149	1,495	Ft. Lauderdale, Baltimore, Hartford, Tampa, Albuquerque, Phoenix
MD-80	8	148	1,820	Ontario CA, Sacramento
DC-9	181	100	1,195	Pittsburgh, Cleveland, New Orleans, Houston, Atlanta
Total	413			

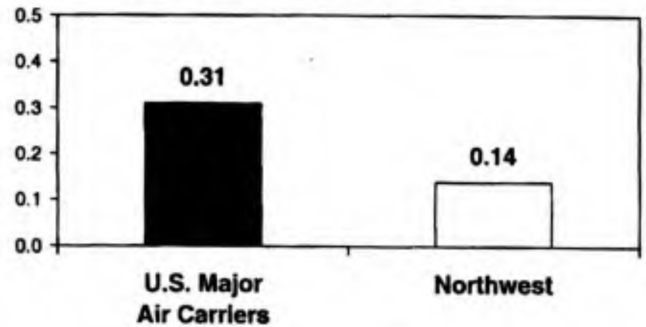
On Average, 65% of These Aircraft – With a Market Value of More Than $3.5 Billion – are Dedicated to Northwest's Minneapolis and Detroit Hubs

Source: Northwest

Northwest Airlines Maintains an Extremely High Commitment to Safety

In the Year Ending September 1997, Northwest Spent $1.13 Billion on Aircraft Maintenance and Crew Training

Accidents per 100 Thousand Aircraft Departures Since 1992



The U.S. Airline Industry Today Has The Lowest Accident Rate in the History of Commercial Aviation. Northwest is a Leader in Maintaining this Excellent Safety Record.

Source: FAA Safety Statistics, via FlySafe

Competition, Fares and Value
at Hub Cities and Beyond

Northwest's Commitment to Hub Growth and Competition

Northwest Strongly Supports Expansion at Minneapolis/St. Paul and Detroit Metro, and Welcomes New Competition at Each Airport

Northwest Provides Operational Services to Many Competing Airlines at Minneapolis St. Paul and Detroit Metro

	Detroit	Minneapolis/St. Paul
Ground Handling:	Champion Air, KLM	American Trans Air, Express I Int'l, KLM, Icelandair, Ryan Int'l
Maintenance:	Champion Air, Delta, Mesaba, Spirit, TWA, United	American, America West, American Trans Air, Continental, Delta, Express I Int'l, Icelandair, KLM, Omni Air, Ryan Int'l, TWA, United
De-Icing:	American, Champion Air, Continental, Delta, Express I Int'l KLM, Mesaba, Midwest Express, Reliant, Southwest, Spirit, TWA TW Express, UPS	Mesaba, Midwest Aircraft
Gate Use:	American, Champion Air, Continental, Delta, Southwest Sun Country, TWA	Vanguard, Frontier, Continental, USAir, Delta, America West

Source: Northwest

No Carrier Has Ever Been Denied Gate Access by the Metropolitan Airports Commission at Minneapolis/St. Paul

- MSP has a Gate Use Policy in Place that Requires Accommodating New Entrants
- Northwest Has Provided Gates for Vanguard, America West, American Trans Air, Business Express and Other Carriers

Northwest's Expansion Plan for MSP Endorses Further Gate Opportunities for New Entrants. The Plan's First Phase Designates 3 of 10 Gates to New Entrants

Source: Northwest

The New Midfield Terminal Agreement at Detroit Metro has Provisions for New Entrants to Request Gate Space

- The Airport Can Require NWA to Make Gate Space Available, Depending on the Activity Level at NWA Gates

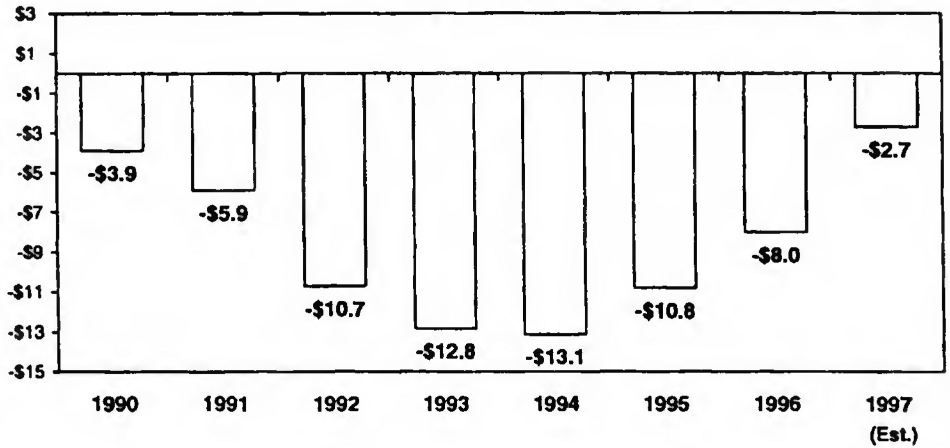
Source: Northwest

Competition, Fares and Value
at Hub Cities and Beyond

The State of the U.S. Airline Industry

The U.S. Airline Industry is Only Beginning to Recover From Its $13 Billion Cumulative Net Losses of 1990–1994

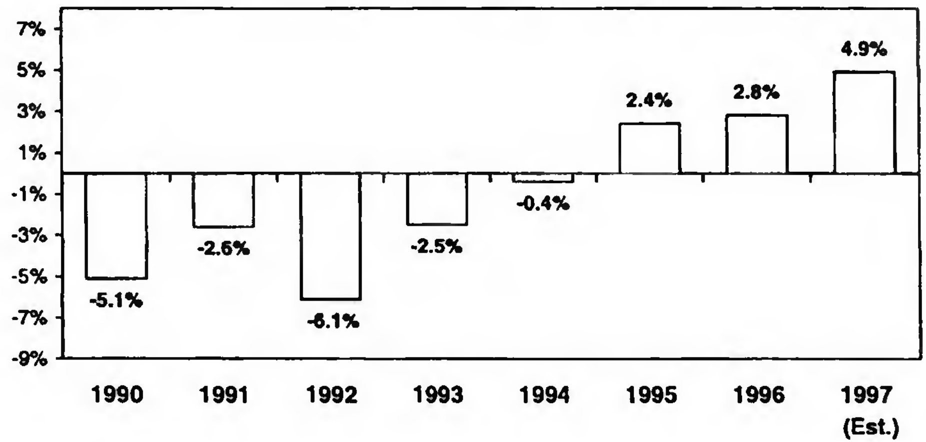
U.S. Scheduled Airlines, Cumulative Net Income (Loss) After Tax
1990-1997 ($ Billions)



Source: Air Transport Association

Although the Industry Has Been Profitable Since 1995, Profit Margins Remain Low

U.S. Scheduled Airlines, Net Profit Margin (%)



Source: Air Transport Association

Northwest's Profits Are Not Excessive, Even in the Best of Times

Northwest's Return on Revenues in 1996, a Record Year, was 5.4%,
Less than Most Fortune 500 Companies Based in Michigan or Minnesota

1996 Financial Results

Michigan Companies	Return on Revenues
Comerica	13.6%
Dow Chemical	9.5%
NASCO	9.1%
DTL Energy	8.5%
Kellogg	8.0%
Pharmacia & Upjohn	7.7%
Chrysler	5.7%
CAS Energy	5.5%
NWA	5.4%
Ford Motor Co.	3.0%
General Motors	2.9%
Lear	2.4%
Kelly Services	2.2%
Whirlpool	1.8%
K Mart	-0.7%

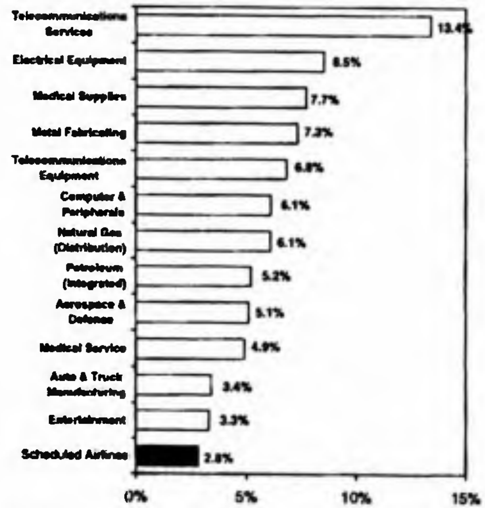
Minnesota Companies	Return on Revenues
First Bank System	19.3%
Norwest Corp.	13.0%
Minnesota Mining & Manufacturing	10.7%
Northern States Power	10.3%
General Mills	8.8%
St. Paul Cos.	7.4%
Lutheran Brotherhood	5.8%
Honeywell	5.5%
NWA	5.4%
United Healthcare	3.5%
Hormel Foods	2.6%
Dayton Hudson	1.8%
Supervalu	1.0%
Best Buy	0.7%
Nash Finch	0.6%

Northwest Lost Over $1.8 Billion Between 1990 and 1993. Implementing the Current Fare Structure Has Not Only Helped NWA to Retain Detroit and Minneapolis as Hubs, but Has Also Helped NWA to Post Profits Since 1994.

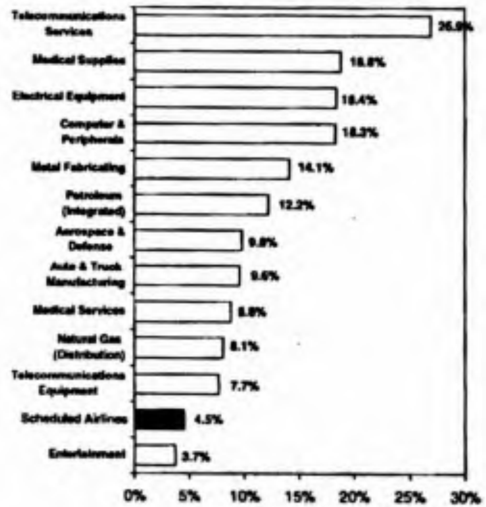
Source: Fortune Magazine, April 1997; Northwest

Compared to Other Major Industries, the U.S. Airline Industry's Profit Margin and Return on Investment Lag Significantly

1996 Industry Net Profit Margin (%)



1996 Industry Return on Investment (ROI)



Note: Scheduled Airline Data for Major U.S. Passenger Carriers Only.
Scheduled Airline ROI Includes Off-Balance Sheet Aircraft Lease Obligations.

Sources: Air Transport Association, Value Line, Airline Annual Reports, U.S. Dept. of Transportation.

Historically, Airline Industry Return on Capital Has Been Among the Lowest of All Industries

Weighted Average Return on Capital, 1987-1996

Note: Data for All Industries Includes Off-Balance Sheet Assets
Source: Stern Stewart Performance 1000 Data

Federal Taxes and Fees Applied to U.S. Airlines and Passengers Have Increased Considerably Since 1990

- In 1990, Domestic Passenger Ticket Taxes Increased from 8 to 10%. In Late 1997, the 10 Percent Tax was Replaced by a 9 Percent Tax Plus $1.00 per Passenger Segment Traveled.
- In 1990, Excise Taxes on Cargo Increased from 5 to 6.25%.
- In 1990, Taxes on International Passengers Increased from $3 to $6 per Passenger Departure. These Fees were Increased Again in Late 1997, to $12 per International Departure *and* Arrival
- Passenger Facility Charges, at Up to $3 Per Enplaned Passenger, Were Introduced in 1992
- A 4.3 Cents per Gallon Defecit Reduction Fuel Tax was Introduced in 1995
- In Late 1997, a 7.5% Tax on Airline Sale of Frequent Flier Miles was Instituted

Sources: Joint Committee on Taxation, U.S. House of Representatives: Present Law and Background Information on Federal Transportation Excise Taxes and Trust Fund Expenditure Programs, 1996; AAAE.

Since 1991, More Than $12 Billion in New Federal Taxes and Fees Have Been Applied to U.S. Airlines – and the Traveling Public

These New Taxes and Fees Are Over and Above the $25 Billion in Federal Excise Taxes that U.S. Carriers Would Have Paid at Pre-1990 Rates

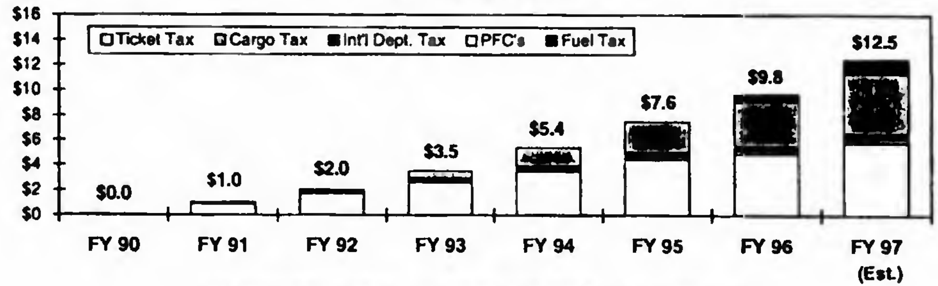
Federal Excise Taxes, Passenger Facility Charges, and Fuel Taxes Paid by U.S. Airlines ($ Millions)
1991-1997

Airline Taxes Shown Do Not Reflect the Estimated $4 Billion Increase Over 5 Years Imposed by the Tax Payer Relief Act of 1997

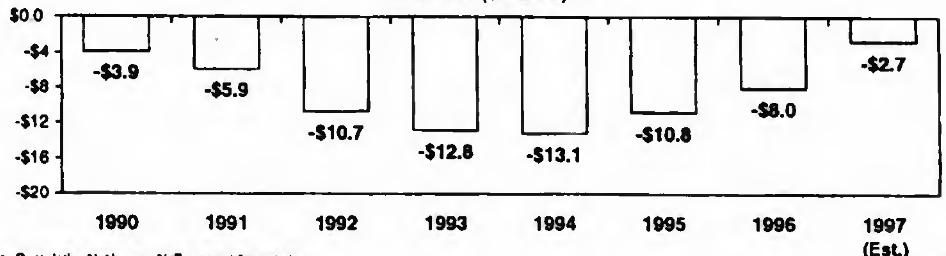
Sources: Calculated From AAAE, U.S. DOT International Air Travel Statistics, FAA Aviation Forecasts statistics

The Cumulative Burden of These New Taxes and Fees To Date Nearly Equals the $13 Billion in Losses That U.S. Airlines Suffered Between 1990 and 1994

Cumulative Payments by U.S. Airlines and Passengers, New Federal Taxes and Fees
1990-1997 ($ Billions)



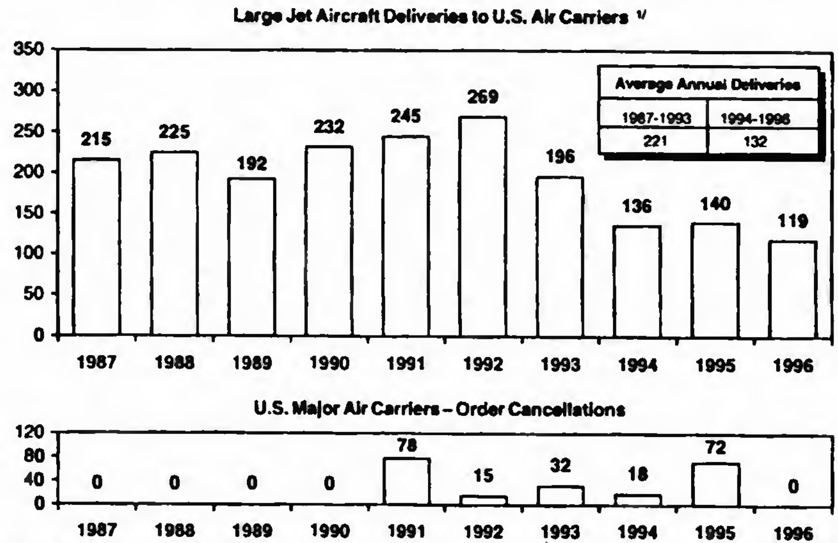
U.S. Scheduled Airlines, Cumulative Net Income (Loss) After Tax
1990-1997 ($ Billions)



Source: Cumulative Net Loss – Air Transport Association

The U.S. Airline Industry Has Had to Take Decisive Action to Return to Sustained Profitability

The Industry Reconfigured its Aircraft Order Book – Canceling, Deferring and Reducing Orders – to Bring Supply Back in Line With Demand



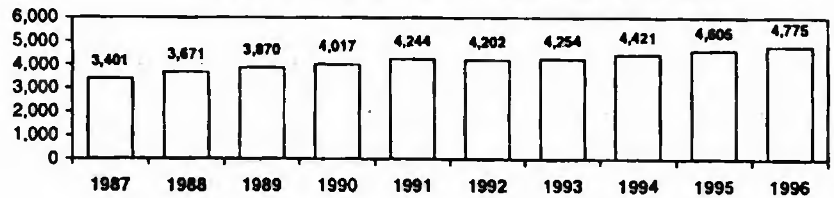
1/ Excludes Regional Jets

Sources: Boeing, Airclaims

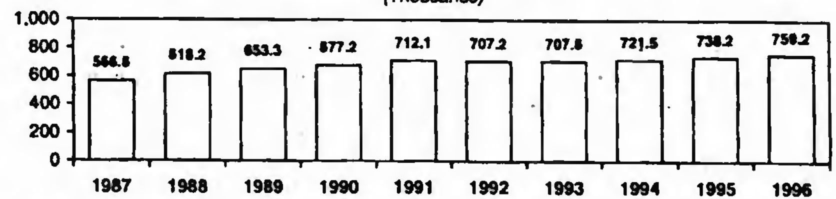
Since the Early 1990's, U.S. Air Carrier Capacity Has Grown Only Gradually

Between 1991 and 1996, the Total Number of Jet Aircraft Grew Only 12.5%, and the Total Number of Seats Grew Only 6.6% 1/

U.S. Commercial Air Carriers, Narrowbody and Widebody Jet Fleet



U.S. Commercial Air Carriers, Narrowbody and Widebody Jet Seats
(Thousands)



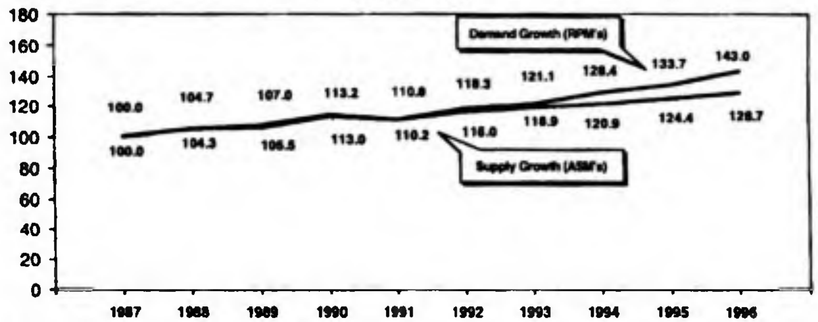
1/ Excludes Regional Jets

Source: FAA

With More Rational Fleet Planning, Demand Growth Has Slightly Exceeded Supply Growth, Returning the Industry to Profitability

The U.S. Airline Industry Has Now Achieved a Profitable Supply-Demand Equilibrium, Although its Margins Continue to Remain Below Those of Other Industries

U.S. Scheduled Air Carriers
Indexed Growth of Revenue Passenger Miles *(RPM's)* and Available Seat Miles *(ASM's)*
(1987=100)



Average System Load Factor	62.4%	62.5%	63.2%	62.4%	62.6%	63.6%	63.5%	66.2%	67.0%	69.3%

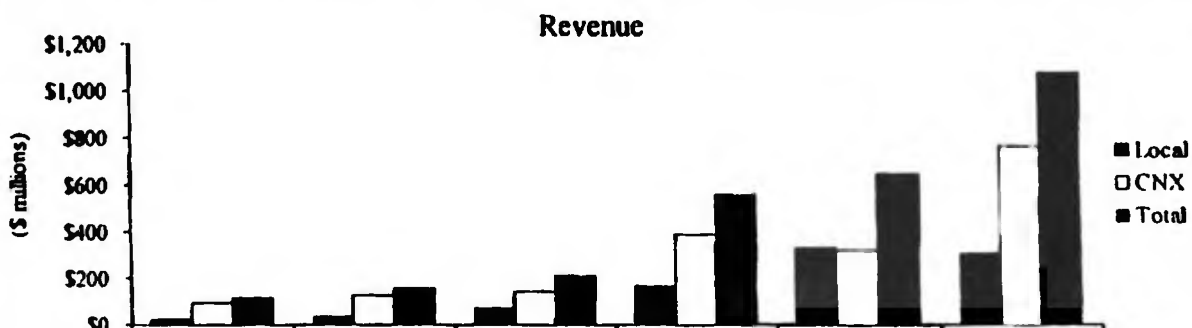
Source: Air Transport Association

PERCENTAGE OF TOTAL NORTHWEST DOMESTIC REVENUE EXPOSED TO LOW FARE COMPETITION

	000s					
	1992	1993	1994	1995	1996	1997
TOTAL DOMESTIC REVENUE	4,008.20	4,377.20	4,728.60	5,098.30	5,716.40	5,881.80
TOTAL LOW FARE REVENUE EXPOSURE	113	154	208	559	644	1,074
PERCENTAGE OF TOTAL REVENUE EXPOSED TO LOW FARE COMPETITION	2.8%	3.5%	4.4%	11.0%	11.3%	18.3%

NW Local and Flow Revenue Exposed to Low Fare Strategy

- Total revenue (local and flow) exposed to low fare strategy rose from $113 million in 1992 to $1.1 billion in 1997, a 57 percent CAGR
  - Local revenue rose from $24 million to $308 million, and flow revenue rose from $89 million to $766 million



	1992	1993	1994	1995	1996	1997
Local	24	32	70	169	328	308
CNX	89	122	138	390	315	766
Total	113	154	208	559	644	1,074

NW CONDUIT TRAFFIC DETAILS

YE DEC 1997 DATA

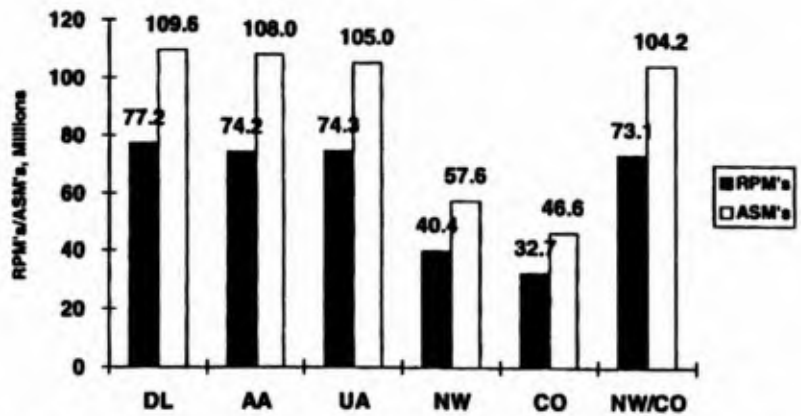
	DTW-MSP	DTW-MEM	MEM-MSP
Daily RTs[(1)]	15	8	8
Avg Onboard LF	69%	75%	71%
Total Daily Seats each way	2,405	1,008	1,047
Local Market Size (PDEW)	296	87	88
Avg Local LF per trip	12%	9%	8%

(1) May 1998 Schedule

An Alliance Between Northwest and Continental Would improve Competition by Helping to "Level the Playing Field"

NW and CO Together Would Meet, but Not Exceed, Traffic and Capacity Levels of DL, AA and UA

Domestic Revenue Passenger Miles (RPM's) and Available Seat Miles (ASM's), YE 3Q97



Source: U.S. DOT, Bureau of Transportation Statistics, Air Carrier Traffic Statistics Monthly, September 1997

The Northwest / Continental Alliance Will Be Comparable in Size to the Big Three

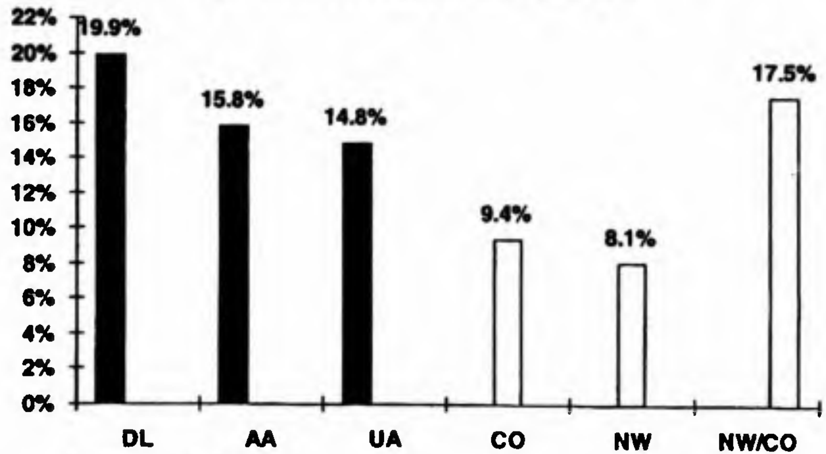
	Carrier	Domestic Available Seat Miles	Domestic Revenue Passenger Miles	Domestic Passengers Enplaned	Domestic Passenger Revenue
Before:	DL	16.8%	17.4%	17.8%	16.7%
	UA	16.0%	16.5%	13.1%	15.8%
	AA	16.7%	16.5%	12.0%	15.9%
	US	8.3%	8.6%	10.7%	11.0%
	NW	8.8%	8.9%	8.5%	9.4%
	CO	7.2%	7.4%	6.2%	7.1%
After:	DL	16.8%	17.4%	17.8%	16.7%
	UA	16.0%	16.5%	13.1%	15.8%
	AA	16.7%	16.5%	12.0%	15.9%
	NW-CO	16.0%	16.3%	14.7%	16.5%
	US	8.3%	8.6%	10.7%	11.0%

Source: DOT Form41 Database from Back Associates, Inc., 1997Q2

Delta, American and United Dominate Flow Market Traffic; No One Else is an Effective Competitor

The Combined Northwest and Continental Share of Passenger Traffic in U.S. Connecting Markets Is Less Than Delta's Share Alone

Share of Total Connecting Origin-Destination Passengers, Top 300 U.S. Connecting Markets, YE 2Q97



Markets Only in 48 States of Continental U.S.
Source: U.S. DOT Origin-Destination Survey

Appendix F

DEPARTMENT OF JUSTICE

FOR IMMEDIATE RELEASE
THURSDAY, DECEMBER 20, 1984

The Department of Justice today announced that it would not initiate any enforcement action under the antitrust laws if British Airways implements a proposed 35 percent reduction in its lowest fare for the remainder of the 1984–85 winter season on the New York-London route.

The Department's position was stated in a business review letter from J. Paul McGrath, Assistant Attorney General in charge of the Antitrust Division, to counsel for British Airways.

The British Airways proposal involves an Apex (advance purchase) or Late-Saver (late purchase) fare at a level of $378 round trip weekdays ($428 round trip weekends). BA's current winter Apex fare is $579 round trip ($619 on weekends). BA currently has no late purchase fare.

In October 1984, the United Kingdom Civil Aviation Authority rejected a similar fare filing by British Airways and other airlines because of its concern that the fare might be considered "predatory" under U.S. antitrust law. That fare was filed with and approved by the United States Civil Aeronautics Board.

The Department of Justice stated in its business review letter that, assuming the British Airways fare proposal was decided unilaterally, it would only be considered predatory if, among other things, the fares were shown to be below cost.

The Department's letter said that a British Airways projection reviewed by the Department, as well as the airline's own internal projections, support BA's contention that the proposed fare is not below cost. In addition, the Department stated that it is questionable whether the antitrust laws may appropriately be used to interfere with the unilateral business judgment of an air carrier that a particular fare reduction would be profitable in the short run. The Department noted the many economic rationales for drastic fare cuts in the airline industry, particularly in off-peak periods.

Under the Department's business review procedure, a person or organization may submit a proposed course of action to the Antitrust Division and receive a statement as to whether the Division would challenge the activity under the antitrust laws.

A file containing the business review request and the Department's response is available to the public and may be examined in the Legal Procedure Unit, Antitrust Division, Room 7416, Department of Justice, Washington, D.C. 20530. After a 30-day waiting period, the documents supporting the business review will be added to the file.

U.S. Department of Justice,
Antitrust Division,
Washington, DC, December 20, 1984.

William C. Clarke, *Esq.*,
Barrett Smith Schapiro Simon & Armstrong,
New York, NY.

Re: *Business Review Request, British Airways PLC*

Dear Mr. Clarke: This letter responds to your request of December 11, 1984 on behalf of British Airways PLC (BA) for a statement of the enforcement intentions of the United States Department of Justice with respect to certain fares that British Airways proposes to charge for the remainder of the 1984–85 winter season on the New York-London route. British Airways, which has been carrying less than 50 percent of the passengers on this route, proposes an Apex (advance purchase) or Late-Saver (late purchase) fare at a level of $378 round trip weekdays ($428 round trip weekends). These fares would be a reduction of about 35 percent from BA's current winter Apex fare of $579 round trip ($619 on weekends). BA currently has no late purchase fare. BA believes these new fares will stimulate competition among air carriers on the North Atlantic and promote additional passenger traffic.

Your request notes that British Airways previously filed similar fares for the 1984–85 winter season with the United Kingdom Civil Aviation Authority (CAA) which, under the Bermuda II Air Services Agreement between the United States and the United Kingdom, has authority to approve or reject fares. Your request also notes that these fares were disapproved by the CAA on October 19, 1984, based on the CAA's concern that such fares, while economic in its view, could be challenged as predatory pricing under the U.S. antitrust laws. The United States Civil Aeronautics Board (CAB) had previously approved these fares. Although the Department of Justice does not usually provide a business review letter to a party proposing simply to change its prices, this situation is virtually unique. In essence, a foreign company has been barred by its government from charging prices that it believes are lawful under U.S. law, and which had already been approved by the CAB, because that government is concerned about the possibility of antitrust enforcement in the United States.

A unilateral decision by an air carrier to reduce its fare would raise questions whether it was illegal under Section 2 of the Sherman Act only if it were determined that the fare reduction was predatory. Such a finding of illegality would require several preliminary findings. For these purposes, we focus solely on the fact that, assuming that British Airways' winter fares were not the result of a conspiracy between BA and any of its competitors, the fares themselves cannot be used to establish predatory pricing unless they are shown to be "below cost."[1] That is because a low fare that covers the cost of providing the service is indicative of—indeed is the hallmark of—healthy competition. A fare that covers relevant costs (as discussed below) is not predatory.

A fare "below cost" is a fare the implementation of which will cause a carrier to incur losses. "Fully allocated" costs have been found to be inappropriate as a cost measurement for determining whether a regulated firm's price is predatory. Indeed, the usual measures of costs for this purpose are either average variable costs or marginal costs or incremental (out-of-pocket) costs incurred generating the service provided in exchange for the fare.

According to your December 11 and 18, 1984 letters, BA data indicate that the net yield per passenger average variable costs per passenger mile of subsonic operations on the New York-London route, even if all its New York-London passengers were to fly on the proposed fares for the remainder of the 1984–85 winter season. This is based on a conservative calculation since it assumes that no passengers will purchase First Class, Super Club, and Economy tickets, which are higher-yield fares.

To support your conclusion that net yield will exceed variable cost, you have submitted yield and cost information pertaining to the New York-London route. The net yield figure you provided is based on a weighted average fare level derived from the $378 round trip fare, a 10 per cent commission rate, a standard New York-London mileage figure, and an assumed load factor of approximately 60 percent (which was BA's load factor for coach passengers on this route last winter). You indicate that this load factor assumption is also conservative, given the likelihood that the proposed, lower fare will stimulate additional traffic.

The average variable cost per passenger mile[2] figure you provided is based on BA's total variable costs, available seat miles, and an assumed load factor of approximately 60 percent. According to your December 18 letter, total variable costs were derived from BA's projected budget for the fiscal year ending March 31, 1985. The following categories were included in variable costs:[3]

Flying Operation
- Fuel & Oil
- Cabin & Flight Crew Variables[4]
- Route Facility Charges

Maintenance (including flight equipment)

Rentals: Flight Equipment

Passenger In-Flight Expense
- Catering Variables

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[1] As a general matter, the fact that a firm's prices are "below cost" does not, by itself, indicate that the firm has violated the Sherman Act. There must be a dangerous probability that the pricing is likely to enable the firm to acquire sustainable market power. Nevertheless, where the price is not below cost, no further inquiry is necessary.

[2] In general, airlines' average variable costs exceed their marginal costs.

[3] Since the fare reduction proposed by BA is limited to the short time remaining in the 1984–85 winter season, the variable costs were considered in this particular off-peak context.

[4] The cabin and flight crew variable costs you have provided do not include salaries for BA personnel. You have represented to us that BA does not treat salary costs for permanently employed workers as short-run variable costs because provisions in its labor contracts and the legal requirements of certain U.K. employment statutes make it impractical to engage in short-term seasonal lay-offs.

Passenger Service Charges/Security Levies
Load Insurance/Airline Operating Certificate
Aircraft Servicing
Traffic Servicing

Based on these projections, which the Department believes represent a reasonable method to analyze these fares, the promotional fares proposed by BA would be above cost. In addition, you have represented that BA's own internal projections, based on a higher load factor assumption and a limitation on the number of discount tickets to be sold, show that BA expects these fares to be profitable in the short-run.

Moreover, it is questionable whether, except under the most extreme circumstances, the antitrust laws may appropriately be used to interfere with the unilateral business judgment of an air carrier that a proposed fare reduction will be profitable in the short-run. First, it is extremely difficult to allocate costs and revenues to particular routes, flights, or fare types. Thus, there are any number of valid accounting assumptions that might be made in concluding that a unilateral fare reduction was profit-maximizing in the short-run. For example, fare levels that might appear to be below cost on a particular route segment might well cover cost when examined in the context of the carrier's total route system. Second, even if one limits the analysis to a particular route segment, marginal cost in the scheduled airline industry may be extremely low. Once a flight is scheduled to depart, the marginal cost for additional passengers may properly be viewed as quite low. Given a strong incentive to fill empty seats, airlines often have found it makes economic sense to reduce the fare applicable to particular market segments. In recent years, airlines have offered reduced fares based, *inter alia*, on time of day, day of week, season, advance or late purchase by the passenger, or a limited number of seats allocated per plane. Thus, it is doubtful that even drastic unilateral fare reductions by an airline can be proven predatory merely by reference to the fare level.

Based on the foregoing, the Department of Justice has no intention of instituting enforcement action against British Airways if it implements the winter fares described herein.

This statement is made in accordance with the Department's business review procedure, 28 C.F.R. 50.6, a copy of which is enclosed. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be publicly available within 30 days of the date of this letter, unless you request that any part of the material be withheld in accordance with paragraph 10(c) of the business review procedures.

Sincerely,

J. PAUL MCGRATH,
Assistant Attorney General,
Antitrust Division.

BARRETT SMITH SCHAPIRO
SIMON & ARMSTRONG,
New York, NY, December 11, 1984.

Hon. J. PAUL MCGRATH,
Assistant Attorney General,
Antitrust Division,
Department of Justice, Washington, DC.

Re: *Business Review Request*

DEAR MR. MCGRATH: British Airways Plc by its undersigned counsel respectfully requests a statement of the Justice Department's antitrust enforcement intentions with respect to a proposal by British Airways to reduce certain air fares between London and New York for the 1984–85 winter season. This request is made pursuant to the Justice Department's Business Review Procedure, 28 C.F.R. § 50.6

British Airways Plc is a British corporation with headquarters in London, England. It is a foreign air carrier within the meaning of the Federal Aviation Act, 49 U.S.C. § 1301 et seq., and it holds a foreign air carrier permit issued by the Civil Aeronautics Board authorizing it to provide air transportation between New York and London among other points. British Airways operates on the New York-London route as a designated air carrier of the U.K. Government pursuant to the Bermuda II Agreement, TIAS No. 8641.

British Airways proposes to offer new promotional round-trip fares (whether advance purchase or late purchase or both) between New York and London at a level of $378 (£259), assuming it receives approval from the aeronautical authorities of the United States and the United Kingdom an required by the Bermuda II Agreement. The proposed fare level would represent a reduction of approximately 35 percent from the current winter APEX fare of $579 roundtrip. British Airways represents that the proposed fares are the product of unilateral determination by British Airways and not the product of any multilateral tariff coordination.

Questions have been raised as to whether fares set at the proposed level could expose British Airways to enforcement action under the U.S. antitrust laws for "predatory" pricing. As the Department of Justice is aware, the United Kingdom Civil Aviation Authority on October 19, 1984 disapproved fares filed by British Airways at substantially the same level as the fares proposed herein, basing its action on a concern that such fares, while economic, could be challenged as predatory pricing under the U.S. antitrust laws.

British Airways believes that the proposed winter fare level is not predatory and does not violate section 2 of the Sherman Act. The proposed fare level is economical and should stimulate both competition among air carriers on the North Atlantic and passenger traffic. Even using a very conservative model, it is clear that British Airways' yield from these proposed low fares will exceed its costs. Assuming for the sake of simplicity that all passengers were carried at these $378 round-trip fares at the same load factor that British Airways achieved for economy passengers in the 1983–1984 winter season, British Airways would still more than cover its 1984–1985 average variable cost per passenger mile. British Airways is submitting separate data that demonstrate this point, and it represents that these data are accurate.

This is quite a conservative calculation for at least two reasons. First, it assumes that load factors would remain the same this winter as last despite the stimulus of attractive new fare levels and a generally stronger market. Second, it takes no account of the contribution to variable costs made by higher-yielding traffic at other levels, for example normal economy, weekend surcharge and first Class fares, that British Airways would continue to carry.

Even taking the most conservative case, British Airways' proposed fare levels are clearly competitive and economic, and British Airways respectfully seeks a statement from the Department of Justice confirming that the Department would not consider these fare levels to violate section 2 of the Sherman Act. If the Department of Justice would like additional information or documentation in support of this business review request, we would be happy to furnish it. We look forward to receiving your response.

Very truly yours,

WILLIAM C. CLARKE

cc: Elliott Seiden, Esq.

Mr. HYDE. Thank you, Mr. Seiden.

Mr. Mitchell.

STATEMENT OF KEVIN P. MITCHELL, CHAIRMAN, BUSINESS TRAVEL COALITION, LAFAYETTE HILL, PA

Mr. MITCHELL. Mr. Chairman, and members of the committee, my name is Kevin Mitchell. I am chairman of the Business Travel Coalition which represents the business travel interests of some 20,000 independent business travelers and major corporations such as Black and Decker, Chrysler, Ford, General Motors, and Procter and Gamble.

And let me say at the outset, Mr. Chairman, that a third airport at Chicago offers some very interesting opportunities to bring competition to other hubs in the north part of this country.

We are not opposed to airline alliances per se. The recently announced alliances, however, will accelerate market concentration, reduce choice, and increase costs for business travel. This watershed development comes at a time when the industry is already too concentrated. BTC recently analyzed price at three fortress hubs to determine the impact competition levels have on prices. The hubs were Cincinnati, Dallas/Fort Worth, and Detroit. These hubs were compared with three other more competitive airports, Los Angeles, Seattle, and Kansas City that also offer excellent non-stop services and affordable airfares as well.

We found consumers pay exorbitant premiums at these fortress hubs. An average premium of between 40 and 84 percent, depending on stage length. Making matters worse, airline's leisure and business travel data are averaged together masking higher prices that are paid by business travelers. Lack of competition is the fundamental reason for these high prices. At the fortress hubs, the market share of the dominant airline ranged from 65 to 77 percent. In contrast, at the more competitive airports, the market share of the number one airline ranged from 20 to 31 percent.

It is our analysis that these proposed alliances should be blocked to protect current competition levels, or at least deferred until we have some sort of industry consensus about where competition is at the 20th anniversary of deregulation. If regulators decide differently, then substantial remedies should be negotiated to address current competition problems and anticipated market distortions that will result from these alliances.

If I may just read from Business Travel News a moment. This is Continental Airline chairman, Gordon Bethune, who I will be quoting, "United put in a four-jet operation, four times a day from Boston to Newark. We said 'Boston to Newark? What the heck's United coming in here for? We ran USAir out of there some years ago. So we put four flights in between L.A. and San Francisco. Get that? You do that stuff to us, we'll do that stuff to you. Now they're down to one flight, and I think we'll pull out.'" When you have 20 percent of the market, meaning Continental and Northwest as the proposed alliance, United will say, "You know what? Between those two guys, they may put 100 flights into L.A. Screwing with one might be the same as screwing with another." Now the point I'm trying to make is that while we are all concerned about the predatory practices directed toward low-fare new entrants, that problem in a sense is marginalized as compared to the fact that the major airlines have stopped competing with each other.

Mr. Chairman, my full testimony identifies several problems and potential remedies, but today I want to address three problems that I'm afraid will not receive proper attention.

Number one, a basic threat these alliances pose is the allocation of routes capacity and pricing over hubs. Forget the 7 percent or 8 percent in direct overlapping markets. The hub-to-hub competition is at risk. Alliance partners will be in a quid pro quo position to help each other raise prices. No matter the level of seamless service taunted by these network alliances, businesses will remain held hostage in individual city-pair markets. The remedy is to require alliances, airline alliances, to offer a simplified, system-wide pricing scheduling just like AT&T did with their network cellular phone—simple, across the board. This would release businesses currently held hostage in monopoly markets, and encourage price competition among the proposed networks.

Second problem—major corporations spend millions of dollars on annual air transportation services, and even they have very little true leverage at the negotiating table with the airlines. This means that the other nine million small businesses in this country are particularly powerless and vulnerable. The proposed super power alliances will allow airlines to tighten their grips on business travelers. As a remedy, a condition for the alliance approval should be that airlines be required to negotiate and enter into business agreements with buying cooperatives comprised of small and mid-sized businesses. They would be self organized and independent of the Government. But this remedy is particularly appealing when combined with the preceding remedy regarding system-wide, simplified pricing.

The third problem is, deregulation has produced for the consumer a very important benefit, the Frequent Flier program. It is a price discount, if you will. However, the problem of securing seats has become a frustrating process for many consumers. And if Northwest and Continental's merger goes forward, 26 million Northwest Frequent Flier members will instantly have access to Continental's limited seat inventory. Regulators should require alliance airlines to offer the frequent traveler the option of cashing in his or her Frequent Flier points for two cents a mile, just the same price they charge outsiders, so that the traveler can purchase the ticket on another airline if need be.

Thank you for your patience.

[The prepared statement of Mr. Mitchell follows:]

PREPARED STATEMENT OF KEVIN P. MITCHELL, CHAIRMAN, BUSINESS TRAVEL COALITION, LAFAYETTE HILL, PA

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Mr. Chairman and members of the committee, my name is Kevin Mitchell. I am Chairman of the Business Travel Coalition (BTC), an advocacy group located in Lafayette Hill, PA. BTC was formed in 1996 by a group of corporations to initiate a debate about the need for increased levels of airline industry competition.

BTC represents the interests of 20,000 independent business travelers, mid-size airports, and major corporations including Black & Decker, Chrysler, Ford, General Motors and Procter & Gamble as well as smaller companies such as American Inks and Coatings.

During 1997, BTC conducted two *Airline Competition Summits* in Washington, D.C. to shed light on airline industry competition problems, and to examine solutions. Some 500 business, community and government leaders from 37 states participated in the Summits, underscoring serious concerns about the status of airline industry competition.

Thank you for requesting the views of customers of the air transportation system. Today's hearing regarding recently announced airline alliances is critically important and symbiotic with the overall debate regarding airline industry competition.

My testimony will include the following sections:

- Position Summary Regarding Proposed Alliances
- Competition Debate Background
- Concerns Regarding Competition Levels
- Concerns With Competitive Consequences of Proposed Alliances
- Recommended Remedies—Primary, Secondary

I. Position Summary Re Alliances

BTC participants are impassioned champions of deregulated and open markets. We are not opposed to airline alliances per se. But recently announced alliances—*CO/NW—UL/DL—AA/US*—will accelerate market concentration, reduce choices and increase costs for business travel. This development comes at a time when experts concede the industry is already too concentrated.

Importantly, the competitive analysis of the proposed alliances must be expanded beyond markets in which partners currently provide overlapping service, and include secondary competitive effects in other markets.

It is BTC's analysis that these transactions should be blocked. If regulators' analyses turn out differently, then substantial remedies must be negotiated to address current competition problems as well as additional problems that will result from these alliances.

II. Competition Debate Background

In the year since BTC held its first *Airline Competition Summit*, a consensus has emerged that, at the 20th anniversary of airline industry deregulation, we have serious systemic competition problems. Those concerned are unbiased individuals and organizations whose only interests in the debate are a stronger airline industry and consumer welfare.

Those who have publicly expressed concern include some of the most ardent free market defenders in Congress—from both political parties, leadership at the U.S. Departments of Justice and Transportation, transportation scholars and the Editorial Boards of major newspapers such as *The New York Times*. Even Alfred Kahn, the "Father of Deregulation" has expressed dismay at the state of industry competition and the lack of stewardship shown by airlines entrusted with the public's assets and the confidence of Congress through the Deregulation Act of 1978.

The airlines' first response to BTC's April, 1997 *Airline Competition Summit* was denial that there is a problem. Shortly thereafter, airline CEOs began a campaign of labeling concerned government officials as mere "backdoor re-regulators." Soon the message shifted to the suggestion there is a "perception problem" wherein airlines had done a poor job of educating government and consumers about how they price their products.

More recently, airlines testified before Congress that the real problem was that DOT had done a shoddy job in the past two years of promoting the consumer benefits of deregulation—in other words, DOT had stopped being major airlines' shill.

And in one of the more offensive acts in this saga, an airline executive recently compared Congressman James Oberstar to Fred Smith's professor who could not see the possibilities of a Federal Express. To appreciate this miscue, consider that Representative Oberstar is probably the most knowledgeable Congressman on airline matters in the history of aviation.

The Washington, D.C. airline lobby had become accustomed to getting its way through tactics of strong-arming, stonewalling and shifting the debate with disingenuous spin. But what changed this past year is that airlines' best corporate customers, having had their concerns ignored, combined their voices with those of consumers, communities, airports and government officials. A "divide and conquer" strategy was no longer an available alternative to major airlines.

Airlines' miscalculations, and unproductive public responses, continue even as the airlines have lost the argument. The Air Transport Association (ATA) apparently recently retained a public relations firm to conduct focus groups around the country. The purpose was to craft a message that would be believable when airlines state they are not engaged in anticompetitive practices and that there are no competition problems.

The first target of what will surely be a well funded public relations attack is DOT's proposed *Enforcement Policy Regarding Unfair Exclusionary Conduct in the Air Transportation Industry*. Full page newspaper advertisements last week unveiled the ATA's new message: *the DOT policy will result in higher fares and less service*. Apparently, major airlines have not yet grasped that it is ultimately counterproductive to insult the intelligence of *so* many people that have *so* much to say about the future of so many airlines.

It is said the *First Rule of the Hole Theory* is, when your in one, stop digging. And DOT Inspector General Kenneth Mead recently warned that if airlines don't engage in a sincere problem solving process with government and other stakeholders, they risk ending up with an equivalent to the *Surface Transportation Board* to hear customer and competitor complaints, or something worse.

III. Concerns Regarding Competition Levels

Deregulation was to allow any airline—willing, fit and able—the opportunity to offer services at all U.S. airports. Marketplace efficiencies were to be driven by consumers' purchasing decisions. And deregulation was to bring competition in the form of new airlines—the mere threat of market entry was to be sufficient to discipline prices—the "contestable markets" theory.

Instead, today we have highly concentrated hubs, record-level business airfares and virtually no new entrant airline applications to DOT in the past two years. And while GAO and DOT studies do show deregulation has lowered average fares, these benefits have been unevenly distributed. For example, access to affordable business airfares for the upper Mid-West, Southeast and Northeast is actually worsening at a time benefits from deregulation should be expanding.

BTC recently performed an analysis of average yields at three so-called "Fortress Hubs" to determine the premium consumers there pay. These three Fortress Hubs—Cincinnati, Dallas/Fort Worth, Detroit—were compared with three other more competitive airports—Los Angeles, Seattle, Kansas City—that also offer excellent non-stop services, but affordable airfares as well.

BTC found that consumers pay exorbitant premiums at these Fortress Hubs. Worse, because the data are averaged, the much higher prices business travelers pay are masked. *Lack of competition is the reason prices are high*, not the robust economy, strong demand for air travel and superior levels of non-stop service that incumbent carriers insist are the reasons.

Indeed, the analyses in the three charts below prove that a deregulated airline industry can produce intended consumer benefits where competition is allowed to flourish.

Chart I

Average Yields (cents) Per Mileage Block

Year Ended September 30, 1997

	Under 250 Miles	251-500	501-1,000	1,001-1,500
Cincinnati	62	46	24	15
Dallas/Fort Worth	33	24	21	NA
Detroit	46	35	21	12
Ave. Yield	47	35	22	12
Ave. Premium	48%	84%	69%	40%
Los Angeles	27	16	12	12
Seattle	37	21	10	NA
Kansas City	28	19	16	9
Ave. Yield	31	19	13	10

Yield = passenger revenues divided by passenger miles.
Based on U.S. DOT O&D Survey

Chart II

Airline Market Share Distribution

Top Three Positions

	#1 Airline	#2 Airline	#3 Airline
Cincinnati	77%	18%	1%
Dallas/Fort Worth	65%	18%	6%
Detroit	75%	4%	1%
Los Angeles	30%	13%	12%
Seattle	31%	16%	10%
Kansas City	20%	12%	11%

U.S. Carriers Systemwide Market Share At Leading U.S., the year 1997.
Based on carrier filings with DOT.
Source: Aviation Daily

Chart III
Airline Operations
Domestic & International

	Non-Stop Seats	Non-Stop Points Served
Cincinnati	13 million	109
Dallas/Fort Worth	45 million	139
Detroit	25 million	111
Ave.	28 million	120
Los Angeles	53 million	116
Seattle	20 million	79
Kansas City	9 million	49
Ave.	27 million	81

Note: Seats represent inbound and outbound services. Jets only. Calendar year 1997 for domestic operations, and 12 months ended October, 1997 for international operations. Source: U.S. DOT, Schedule T-100.
Note: Non-Stop Points Served source: Official Airline Guide, Week of May 1–7, 1998.

What's gone wrong? There appear to be systemic problems.

1. Mergers such as Northwest/Republic—TWA/Ozark—USAir/Piedmont—were allowed to proceed during the 1980's with little scrutiny regarding potential impact on future competition levels.
2. Airline practices intimidate investors and limit competition. Examples abound.
   - Responding to new entrants with exclusive corporate contracts, increased frequent flyer benefits and travel agency commission bonuses.
   - Dumping large amounts of cheap seats into a market to drive out a new entrant.
   - Blocking new entrants by refusing to sublease airport facilities such as gates and counter space.
3. Federal regulations still exist that stifle competition such as the High Density Rule. Implemented in 1986, this rule provided incumbent airlines at four major airports—DCA-JFK-LGA-ORD—coveted takeoff and landing time slots for free, which ultimately resulted in greatly diminished competition levels.

IV. Concerns With Competitive Consequences of Proposed Alliances

According to Salomon Smith Barney, 66% of the 50 largest U.S. airports—which account for 80% of all enplaned passengers—are *excessively concentrated*. The balance of the airports are considered *concentrated*.

There is a national debate regarding existing competition levels that has yet to include sincere input from major airlines. Therefore, without an industry "settlement" regarding the status of competition at the 20th year milestone, it is dangerous to allow the allocation of 80% of the domestic air transportation market among three alliances to proceed.

Regulatory analysis should encompass the direct and indirect impacts on competition to include the following considerations:

1. *Overlapping Routes*. Airlines mislead when they argue that their alliances will only overlap on some small number or percentage of city-pair routes. Many of the route overlaps are huge markets such as Detroit - New York. For example, Continental and Northwest overlap in markets with a combined total of approximately 4 million annual passengers.

   The near total consolidation of the domestic U.S. market into just a few superpower supplier blocks will reinforce the recent practice of major airlines avoiding competition by staying out of each other's hubs.
2. *Hub-To-Hub Quid Pro Quo*. The Stealth weapon against competition and free markets will likely be the "wink and a nod" organization of hub-to-hub routes, capacity and pricing. For example, hypothetically, United could help alliance partner Delta in the Cincinnati - Salt Lake City market in exchange for Delta's help in the Los Angeles - Chicago market.

   Delta flies non-stop from Cincinnati to Salt Lake City while United flies from Cincinnati to Salt Lake City through Chicago. United could reduce its low fare capacity to Salt Lake City to allow Delta to raise its prices further.

In return for this favor, Delta could reduce its low fare capacity from Los Angeles to Chicago through Salt Lake City. This would allow United to increase its prices on its non-stop service from Los Angeles to Chicago.

The breadth and scope of this *category of quid pro quo*, needs to be understood on an alliance-by-alliance and industry-wide basis.

3. *Domestic Airline Leverage Vis-à-vis Corporations.* The proposed transactions—NW/CO - AA/US - UL/DL—will provide airlines with even greater leverage in negotiations with corporations. In a hypothetical negotiation with Detroit-based "ABC Corp.", Northwest Airlines would likely have unfair leverage over ABC Corp. For example, it could require, for existing discounts with Northwest Airlines to remain in effect, that ABC Corp. shift its business elsewhere in the new alliance network to Continental.
4. *International Airline Leverage Vis-à-vis Corporations.* Hypothetically, after the United-Delta alliance is fully approved, Delta will be positioned to call on a corporation in Cincinnati and introduce the customer to their "new Star Alliance Global Suppliers." In other words, the customer will have its international suppliers dictated to them.

   Delta will be able to leverage its dominant position in the Cincinnati market to require corporations there to move market share to Star Alliance partners in other markets in order to maintain any type of discount with Delta. A quid pro quo will likely apply here.
5. *Consumer Confusion.* In a free market, consumers require complete and accurate information regarding real choices in order to drive marketplace efficiencies and innovation. For example, 65 different airfares with varying rules between Cincinnati and Atlanta alone represents consumer confusion, not true consumer choice. When you overlay this already complex structure with the current 400 domestic and international airline alliances, comprising 177 airlines—that on average last only 2½ years—the consumer will continue to pay unnecessarily high prices.
6. *Airline Leverage Vis-à-vis Travel Agencies.* In recent years travel agencies have had their commissions cut to a point where many are on the precipice of financial collapse. Similarly, because new airline entry has virtually dried up, incumbent airlines have been able to dramatically increase their leverage over travel agencies at the negotiation table on a variety of issues.

   As these alliance partners pull out of markets and reduce capacity in support of each other's yield management goals, commission override programs will become more strategically targeted. Financially beleaguered travel agencies will be easy targets for airlines seeking to transform them into "Exclusive Dealerships" where, for example, the agency only sells Star Alliance partners in markets where those partners provide service.

   The long-term ramifications for competition are staggering and we are already seeing the beginnings of the end-game with British Airways' test of an exclusivity-oriented commission override program in the Miami to London market. Travel agency dealerships would likely have the following consequences:

   - The loss of unbiased advice for consumers who need to understand the competitive choices available in an increasingly complex and confusing fare structure environment.
   - New entrant airlines will be effectively blocked from the primary distribution channel.
7. *New Entrant Blocking.* The proposed alliances will make available vast new resources, including joint frequent flyer and frequency scheduling and travel agency and corporate marketing programs, to frustrate new entrant competition.
8. *The Demise of Frequent Flyer Benefits.* DOT, and other industry participants, believe that the competitive forces unleashed by deregulation have produced the frequent flyer benefit. Call it a discount, call it a perk—it's a quantifiable benefit.

   In recent years, airlines have dramatically expanded their ancillary frequent flyer programs with partners such as banks, florists and roofing companies wherein airlines sell frequent flyer points for two cents per mile. Indeed, one major airline has a program for undertakers where he receives one free round-trip ticked for every 30 corpses shipped on the airline.

   The upshots are an increasing number of consumers accruing frequent flyer points and ever more angry travelers unable to redeem points for tickets. The problem of securing seats to popular destinations using frequent flyer points has become frustrating for consumers.

The proposed alliances will make it virtually impossible for the so-called "Road Warrior" to take his or her family on a vacation to a popular destination that perhaps he or she spent years working toward. Airlines allocate approximately 8% of their seat inventory for frequent flyer redemptions.

If, for example, the Northwest - Continental merger is approved, 26 million Northwest frequent flyer members will have instant access to Continental's limited seat inventory. Consumers who are members of Continental's frequent flyer program, like the millions of Americans who belong to all six airline alliance partners' frequent flyer programs, will lose a highly cherished benefit.

V. Recommended Remedies

As stated previously, there are sufficient compelling reasons to either block these proposed alliances or defer their examination until there is a "settlement" with the airline industry over a host of competition issues. Barring these outcomes, the alliances should only be approved if an effective set of remedies is enplaced to correct for current marketplace distortions and anticipated competition problems resulting from the further reduction in competition.

PRIMARY REMEDIES

1. *Issue.* The proposed alliances may offer "seamless" service in some cases. However, from a pricing standpoint, the customer will continue to be held hostage in individual city-pair markets as well as the hub-to-hub markets, as discussed earlier. Moreover, these alliances will greatly strengthen airlines' market and pricing power.

   Major airlines like to use the telecommunications industry model as a rationale for networked alliances. They argue that 30 years ago a phone call from Washington, D.C. to Cairo, Egypt would go through some five telephone companies, and the consumer would know it, often getting disconnected. By contrast, today the service is "seamless" even though the consumer is not aware he may still be handed off from one telephone company to another.

   However, the plausibility of the comparison ends there. Recently, AT&T announced a new cellular phone pricing plan. For 11 cents a minute customers can call anywhere in the country without roaming or long distance charges 24 hours a day, 365 days a year. Competitors are expected to follow.

   This is pro-competitive because businesses can now avoid being held hostage in individual monopolistic phone markets where obscene roaming charges are extracted. Unlike in the airline industry, businesses will be able to receive bids on their phone volume each year in a simple process that will support price competition.

   Remedy. The remedy is to require alliance airlines to offer a simplified, system-wide pricing structure. The structure could be based on a cents-per-mile, anywhere in the system approach. Alternatively, to account for the saw tooth effect of per-mile pricing, mileage blocks could be established.

   This remedy would release businesses currently held hostage in monopoly markets and encourage price competition among the proposed three mega networks. Businesses will be able to put their air travel volumes out to bid on an apples-to apples basis.

2. *Issue.* Even large businesses that spend millions of dollars in annual air transportation purchases have surprisingly little parity at the negotiating table with airlines. Small businesses are particularly powerless.

   For example, in 1994, IBM with $300 million dollars in annual air transportation purchases asked its airline suppliers to remove frequent flyer programs from their contracts. Airline response was not no—it was hell no. In what other industry would a buyer with $300 million dollars to spend not be able to negotiate what product features it wanted added, dropped or changed?

   Similarly, in 1996, the Business Travel Contractors Corporation, a corporate buying group, offered airlines $1.5 billion in business opportunities in exchange for a simplified airfare structure and airfares guaranteed for the term of a contract. Airlines were able to ignore $1.5 billion in new business opportunities!

   Airlines currently have awesome market power and incredible leverage over their very largest customers who spend millions of dollars on air travel. Allowing 80% of the country to be carved up among three superpower supplier blocks could make 1998 seem like the good old days when a $2000.00 coast-to-coast fare was apparently a bargain.

The real point here is that Congress and federal regulators should not be so concerned about the *Fortune 100* who have joined the *Business Travel Coalition* out of frustration and concern. Rather, the concern should be focused on the other 9 million U.S. businesses that have no chance of negotiating with airlines.

Congress should be particularly worried about a subset of U.S. businesses. According to *USA TODAY*, "About 276,000 companies account for 70% of all job growth. That's just 3% of all U.S. companies. And of those companies, 97% have 100 or fewer people working for them when they start growing." Businesses require access to affordable airfares to grow their businesses. Our current robust economy is masking a deleterious impact on small businesses that we will all pay for sooner or later.

Remedy. As a condition for alliance approval, regulators should require airlines to negotiate business agreements with buying cooperatives comprised of small and mid-size businesses. The cooperatives would be self-organized and independent from the government. This may be the only conceivable solution for the millions of small businesses and independent business travelers. This remedy is particularly appealing when combined with the preceding remedy regarding system-wide, simplified pricing.

3. *Issue.* As explained earlier, the proposed alliances will likely eliminate for some consumers the benefit of the frequent flyer programs. The 26 million members of Northwest's frequent flyer program will surely find Continental's service levels and popular destinations to South America very appealing. Continental's frequent flyer members will likely lose much of their benefits as they will find it difficult, if not virtually impossible, to redeem their frequent flyer points for tickets to popular destinations at desirable times.

Remedy. Regulators should require alliance airlines to offer frequent flyer members the option of cashing in their frequent flyer points for two cents a mile—exactly what airlines are selling them for—so they could at least use the funds to help defray the costs of a flight on any airline providing service to the desired destination. Otherwise, the frequent flyer points become virtually worthless.

SECONDARY REMEDIES

1. *Issue.* Travel agency commission overrides can be targeted against new entrant competitors in a way that prevents consumers from knowing a lower priced product is available in the market. For example, the Free Press reports, "And in a give-no-quarter move, a fax from Northwest to travel agents showed that the big airline was offering a whopping 20-percent commission to agents (who then typically got 10 percent) if they booked Northwest flights to the Pro Air destinations."

The targeted use of override commissions can deprive a new entrant from reaching its breakeven load factor resulting in its exit from a market wherein the incumbent airline is free to raise prices.

Remedy. DOT must issue guidelines regarding what constitutes unfair, exclusionary conduct with respect to use of override commissions.

2. *Issue.* There are numerous anticompetitive practices such as commission bonuses targeted against new entrants. However, the recently proposed *Enforcement Policy Regarding Unfair Exclusionary Conduct in the Air Transportation Industry* focuses on the most important competition problem: an incumbent airline dumping massive numbers of cheap seats into a market to intentionally run a new entrant out.

The objective of this predation is to prevent a new entrant from reaching its 60% breakeven load factor by starving it of traffic through adding capacity. If an incumbent carrier were to match a new entrant seat-for-seat, a typical response to entry by Southwest Airlines, the new entrant would do just fine because market size can triple in response to affordable fares.

However, when an incumbent that previously had 1,000 seats in a market at $75.00 responds to a new entrant by adding 50,000 seats at $75.00, it erodes its own revenues by millions of dollars. This is a "red flag" sign of predation.

The only rational explanations for losing such sums of money are if: 1) an incumbent's purpose is to run a competitor from a market and then recoup loses through fare increases to previous or higher levels; and 2) if the predation serves to discourage future entry into markets dominated by the incumbent.

BTC believes the proposed DOT policy is an important step of the many required to remedy market power abuses. BTC would like to see the policy strengthened in terms of punishment.

Remedy. If an incumbent airline is found by an Administrative Law Judge to have engaged in predatory behavior, in addition to fines, it should be required to maintain the capacity and pricing used in response to the new entrant for 10 years.

3. *Issue.* Computer reservation systems (CRSs) owned by major airlines are not permitted to compete on price because of DOT rules. Accordingly, the prices charged by CRSs are undisciplined and have increased recently at a rate of ten times the inflation rate for some airline customers.

   Major airlines that own these CRS's derive excessively profitable revenue streams that are used to cross-subsidize competition with low-fare airlines by dumping thousands of cheap seats into markets. Likewise, the exorbitant prices charged by CRSs increase costs for smaller, low-fare airlines. At the end of the day, the consumer is paying for a dysfunctional, costly distribution system in the price of the airline ticket.

   Remedy. Require major airlines to divest themselves of CRSs. Furthermore, allow corporations and buying groups to introduce price competition by issuing Requests For Proposals to the newly independent CRSs. Cross-subsidization will disappear, airlines' costs will fall and the consumer will benefit from lower prices.

4. *Issue.* Major incumbent carriers at the four High Density airports were provided takeoff and landing slots for free as a result of the 1986 Buy-Sell Rule. These slots are extremely valuable as evidenced by entries on airlines' balance sheets. The slots are a license to print money with the public's assets, and moreover, used to cross-subsidize competition with low-fare airlines. Likewise, new entrants cannot gain sufficient access to these strategically important airports because incumbent airlines are unwilling to sell or lease slots to them.

   Remedy. Require incumbent airlines at the High Density airports to pay a slot lease fee to the government in consideration of the value of these public assets. Proceeds should be used to support capacity expansion initiatives for new entrant competition.

5. *Issue.* Frequent Flyer programs are a huge barrier to competition. Many airlines respond to new entrant competition by doubling or tripling points to discourage consumers from supporting a new entrant. New entrant carriers without a mega network are at a disadvantage when faced with this type of targeted anticompetitive response. The problem will grow exponentially more serious as these proposed alliances combine their frequent flyer programs.

   Remedy. Require alliance partners to allow all airlines' customers to redeem their frequent flyer points on alliance partners' flights. For example, customers of Southwest Airlines would be able to redeem points earned on Southwest Airlines for tickets on United Airlines. This would reduce the anticompetitive impact of the combined alliance frequent flyer programs and be a major benefit to consumers. An ARC-like clearinghouse could facilitate the reconciliation process among airlines.

Mr. Chairman, this concludes my testimony. I appreciate the opportunity to present a customer perspective on competition issues and the proposed alliances.

Mr. HYDE. Thank you, Mr. Mitchell.

Mr. Kahan.

STATEMENT OF MARK S. KAHAN, VICE CHAIRMAN AND CHIEF OPERATING OFFICER, SPIRIT AIRLINES, INC., EASTPOINTE, MI

Mr. KAHAN. Thank you, Mr. Chairman, and it's a particular privilege to be before you and also Ranking Member Conyers and the rest of the committee as a representative of a mid-west airline, one which was founded in Detroit and which began operating in Chicago just this year. And I look forward to discussing some of our rather interesting experiences, including our airport experiences if you like.

Mr. HYDE. Yes, very much so.

Mr. KAHAN. I begin my testimony by reviewing the overall state of competition as I see it. I basically came to Washington to work on airline deregulation with my mentor and previous employer, Dr. Kahn. And I'm pleased to say since I was part of that process, that I continue to believe that deregulation was a good idea for the country. It was a good idea to get the Government out of the marketing departments and out of the board rooms of the airlines. At the same time I think after 20 years, we can begin making some serious distinctions to see where the policy has worked well, and where it's worked less well. And in my testimony I try to make four kinds of groupings of markets.

The first—long haul markets, where passengers can readily use connections and are happy to use connections. I think there, the hub and spoke system has worked really well, to the benefit of consumers. I believe that most of the statistical benefit of deregulation arises in these kinds of markets. And I also believe that that is the area which could be most imperiled by the domestic alliances depending on their specific terms and scope. And I certainly hope that the Department of Justice and the Department of Transportation will take a good, hard look at that.

For whatever it's worth, I speak primarily as a private citizen. Spirit does not operate in these markets. Our principal concern there is that the overall level of competition in the country does not lessen to the point where the major carriers can train even more of their resources on us.

The second category of market is short to medium haul, non-stop markets primarily, spokes to airline hubs. And I think that's where we've had the most serious problems. And that's what the DOT competition guidelines are primarily aimed at. That's your Chicago/Des Moines, or your Detroit/Boston, or Detroit/Philadelphia which have become rather notorious. And I look forward to answering any questions you might have on those as well.

The third is leisure markets where new entrants like Spirit don't absolutely have to have a high frequency of operation to operate, where barriers to entry aren't quite as important. Therefore, there are a lot of new entrants in leisure markets. Nevertheless, I do, in my testimony, compare Detroit/Orlando with Minneapolis/Orlando just to give an idea of how important it is to have a new entrant, even in a leisure market, which is always been thought to have been almost competitive by definition. It isn't necessarily so. And there are some serious differences in the way the market structure in Minneapolis/Orlando works versus Detroit/Orlando. And I think it's interesting, both from a public policy standpoint and in terms of what's really going on out there today.

The fourth segment of the domestic marketplace is that part of the domestic marketplace which is related to international aviation. That tends to be overlooked. I think it's really important, because it's important to understand that new entrants like Spirit, at this point, are totally foreclosed from international aviation. That has some powerful consequences. That means that we don't have the chance, nor will we ever probably have the chance—not within my lifetime at least—to link up with a KLM. So, at a hub airport like Detroit, we're competing not only with Northwest, but also KLM and the rest of Northwest's partners.

For deregulation to work, and I think it can work, the data indicates that new entrants are vital. I've reviewed personally, one by one, the 1,000 top origin-in-destination markets. And you can see that the long haul markets are highly competitive. You can see that in those short to medium-haul markets that I talked about where Southwest or some other, in rare case new entrant is there, there's a powerful effect. If we're not there, fares are very high.

I think that we need two fundamental things right now. We need a good, proper competition policy. We really do need to set the rules of the game. In my testimony, I cover the relationship that Mr. Hutchinson raised between the Sherman Act and Section 411 of the Federal Aviation Act and the Airline Deregulation Act. I believe the competition guidelines are fully in accord with the statute of the legislative history in all of that. And I'll be happy to take any questions on that.

I'd like to come back—and the second thing that we absolutely have to have, is we have to have a reduction in barriers to entry. No matter how good a competition policy we have, if there aren't gates and slots for us to operate with, we can't do business. If we wanted to go into Detroit/Washington, Congressman Conyers—which we actually might like to do—we need to have three things that I hope we'll have in my lifetime. One is, we would need to have gates at Detroit. Second, we would have to have slots at National Airport because our competitor competes at all three airports. That's very important competitively. And third, we would need to have a good competition policy. Because there are some things that Northwest has in a market like that which are impossible for us to have. We'll never have a Frequent Flier program that has the scope of Northwest. That's just beyond us. There are many other things that they have that can't be fixed, which I don't expect to be fixed, wouldn't asked to be fixed. Those things that we can fix, we darn well better fix or we're not going to have a very competitive aviation system, and then I fear for re-regulation.

I'll be happy to take your questions, Sir.

[The prepared statement of Mr. Kahan follows:]

PREPARED STATEMENT OF MARK S. KAHAN, VICE CHAIRMAN AND CHIEF OPERATING OFFICER, SPIRIT AIRLINES, INC., EASTPOINTE, MI

SUMMARY

Based in Detroit, Spirit operates 13 aircraft, has 900 employees, and serves 12 U.S. cities. With the exception of 1996, Spirit has been profitable each year of its existence. Spirit does not serve "business routes," because it has found that it is virtually impossible to engage in toe-to-toe competition with major carriers under current government policy.

The proposed airline alliances threaten to collapse six significantly overlapping national competitors into three fully overlapping entities. If all three alliances were fully implemented, the national HHI index could more than double, from about 1202 to 2430. The number and/or size of competitive hubs will likely decrease, threatening to substantially lessen competition. New entrants will face even stronger challenges in an increasingly concentrated market. If these alliances were approved, then the case for the Department of Transportation's Competition Guidelines would be even stronger. Predatory tactics which deter new entry must be stopped.

Each alliance must be analyzed with a view to reducing tangible barriers to entry which thwart competition. For example, Spirit has no gates at Detroit. With North-

west already controlling "the vast majority of gates [at DTW] . . . under long term exclusive leases," it seems unthinkable that Northwest also might be permitted to control Continental's four gates at DTW. Alliance approvals must not result in a widening in the gulf between the "haves' and "have nots." However, if the alliances contain efficiencies which would release scarce gates and slots to "have nots," this is a procompetitive factor to be considered.

International alliances make it harder for carriers such as Spirit to compete in the *domestic* marketplace. With alliances "feeding" each other on a more-or-less exclusive basis, the ability of smaller carriers such as Spirit to attract international connecting traffic is non-existent. The international alliance phenomenon makes it even more critical to take the necessary steps to level the playing field for domestic new entrants.

Criticisms of DOT's proposed Competition Guidelines are groundless. By taking action in this critical area, DOT has not "usurped" the authority of other agencies. The architects of airline deregulation intended joint responsibility within the Executive Branch between the Departments of Justice and Transportation.

The notion that the Competition Guidelines create a 'protected" or "subsidized" class of new entrants is consummate spin, nothing more. The major carriers remain free to "match" prices, and retain all of their enormous marketing and other advantages. They are essentially constrained only in their ability to flood the market with seats in a manner which makes sense only if the new entrant is obliged to exit.

Nothing in the Guidelines exceeds the DOT's statutory authority or legislative intent. Since at least *Federal Maritime Commission* v. *Swedish American Line*, 88 S. Ct. 1005 (1968), it has been settled that, even in the absence of express statutory language, an agency not only may but should, in its decisions and rules, give effect to antitrust principles. Congress has re-enacted 49 U.S.C. § 41712 without change on at least four occasions since 1938 without a hint of removing plenary agency authority over predatory or exclusionary practices, including pricing. The express mandate contained in 49 U.S.C. § 40101 (a)(7) to thwart "unfair, deceptive, predatory, or anti-competitive practices" remains similarly unchanged.

STATEMENT

Mr. Chairman,

My name is Mark Kahan, and I am honored to appear before this Committee as Vice Chairman and Chief Operating Officer of Spirit Airlines, Inc. On a personal note, I came to Washington in 1977 from New York with Chairman Alfred E. Kahn to assist at the Civil Aeronautics Board, and have been involved in different aspects of airline competition ever since. Dr. Kahn has a far more accomplished student, Irwin Stelzer, who recently wrote of the issues before this hearing: "The answer . . . is not to forego the enormous benefit of deregulation, estimated by scholars at the Brookings Institute to have saved American consumers billions of dollars. It is to apply competition policy with extra vigor and intelligence, even though the industry does not welcome such attention." The Committee's invitation to appear today is an opportunity to present the viewpoint of smaller carriers, and the case for a more competitive industry environment, with Dr. Stelzer's admonitions in mind.

Spirit is among the oldest of the surviving post-deregulation new entrants. The Company's roots in the travel business reach back to 1980 when founded by Ned Homfeld, who remains Spirit's principal shareholder and Chief Executive Officer. Spirit began operating its own airplanes in 1990, and 900 employees and 13 aircraft now serve our home town, Detroit, as well as Boston, Chicago, Pittsburgh, Cleveland, Atlantic City, Myrtle Beach, Orlando, Tampa, Ft. Lauderdale, Melbourne (September 14, 1998) and Fort Myers. With the exception of 1996, Spirit has been profitable each year of its existence.

You will note that Spirit is unusual since we serve almost the same number of points (12) as we have airplanes (13). Our larger competitors typically have three or more planes for every point served. This is not an accident. Spirit's current business plan generally eschews "business routes" or hub-like operations which mandate large economies of scale. Instead, we concentrate on underserved or "leisure" markets where one or two round trips per day is competitively sufficient. Spirit has learned the hard way that head-on, toe-to-toe competition with major carriers on business routes, *under current government policy*, is a suicide mission, irrespective of the price or quality of service we offer.

I have recently testified before the Aviation Sub-committee of the Committee on Transportation and Infrastructure about the practices of major carriers which have led Spirit to that conclusion, and why the Department of Transportation (DOT)'s recently proposed Competition Guidelines would enhance the success of Airline Deregulation, and would ask that this testimony (enclosed below) be entered into the record of this hearing. Since today's hearing is primarily about the competitive implications of the recently announced alliances between the six major domestic carriers, I should like to devote the bulk of this presentation to broader themes.

THE STATE OF AIRLINE COMPETITION TWENTY YEARS AFTER DEREGULATION

After twenty years of airline deregulation, one can perceive four relatively distinct market groupings:

1. *Medium to long haul city-pairs*, where connections are either necessary or are effective substitutes for existing non-stop service. Examples of this market type would be New York-Los Angeles or Albuquerque-Boston. Passengers in these markets have a choice of many carriers over multiple hubs—at least today, prior to further consolidation. While there are surely pockets of significant market power, which affect first class or late booking passengers, these city-pair markets tend to be quite competitive. Here, the efficiencies of "fortress hubs" are most likely to lead to lower prices and better service. It is my belief that the greatest benefits of Airline Deregulation have accrued to passengers in these types of markets.

2. *Short to medium haul city-pairs with non-stop service*, typically spokes to a major carrier hub. Examples of this grouping would be Chicago-Des Moines or Detroit-Boston. These city-pairs are frequently too notable for the lack of consumer choice available. Connections are viewed as highly inferior in these markets, and are not aggressively marketed. Though hubs located at secondary metropolitan areas (such as Charlotte) can have some beneficial impact on the frequency of service offered, the general characteristics of "fortress hubs" can lead to monopoly, particularly when combined with tangible barriers to entry such as slot or gate constraints.[1]

In these markets, the hub carriers enjoy a high degree of ability to control prices and exclude competition, and they exercise that ability. Entry or a realistic threat of entry by new carriers is the only hope for a competitive outcome, and it is not happening. The exception is markets where Southwest Airlines is competing, particularly in the West.

3. *High density city-pairs involving popular leisure destinations*. Examples are Detroit-Orlando, New York-Ft. Lauderdale or anything into Las Vegas. Carriers need not attain high frequency of service (or expensive frequent flyer programs) to attain competitive viability, and consequently, these markets are somewhat favored by low fare new entrants.

Even though passenger price sensitivity limits its exercise, there is potential for exercise of monopoly power in these markets. For example, Spirit's late 1993 entry into the Detroit (DTW)-Orlando (MCO) market has resulted in considerably lower fares (and better service) than before. Attachment A compares average fares (in cents per mile (c.p.m.)) and capacity in the Minneapolis (MSP)-Orlando (MCO) and Detroit (DTW)-Orlando (MCO) markets, with 1994 as a base period. Northwest has a 100% non-stop monopoly in the MSP–MCO city pair. Because MSP–MCO (1,316 miles) is a considerably longer stage length than DTW–MCO (960 miles), competitive yields should actually be lower, because unit costs decrease with distance.

On Attachment A, note first that capacity and yields in the beginning of the period (First Quarter 1994) are quite similar for each market.[2] Now, consider the situation today. It is plain that Northwest has reduced or marginally increased capacity on the higher yield MSP–MCO segment while virtually doubling capacity in the competitive DTW–MCO segment, in an evident attempt to deny Spirit market share and a profitable yield. In the Third Quarter, 1997, the most recent period reported upon, yields are 39.4% higher in the MSP–MCO monopoly segment despite the longer stage length.

The lesson is a familiar one: so long as there are new entrants, fares in this type of market are unlikely to get out of line, since barriers to entry are relatively low. But neither Spirit nor any other carrier of which I am aware is planning to compete with Northwest on the MSP–MCO route.

4. The fourth competitive market grouping, commonly overlooked, but appropriate for a hearing whose focus is the alliance phenomenon, would be any *domestic leg of an international journey*. The decline in interline connections and growth of non-traditional interior international gateways, which was among the first consequences

[1] These constraints are most pervasive in the Mid-West and East, where Spirit operates. Chicago is less than an hour's flying time from Detroit, and is a natural focus for potential expansion. However, slots at O'Hare are either non-existent or prohibitively expensive. Operations at Midway are extraordinarily difficult because of the short runways. Spirit is pleased that the Committee is encouraging exploration of a third airport for this vital metropolitan area.

[2] 181,366 total seats, with an O & D yield of 11.78 c.p.m. for DTW–MCO, and 165,072 seats with an O & D yield of 11.59 c.p.m. for MSP–MCO.

of the Airline Deregulation Act, has substantially foreclosed this market to any carriers other than major hub carriers. The growth of international alliances simply takes this process to its final conclusion. As shown below, this has important consequences for purely domestic aviation.

THE PROBABLE IMPACT OF THE PROPOSED ALLIANCES

I would not suggest that all markets fit neatly into these categories. Short haul shuttle type operations, for example, range from the duopolostic, protected, and high fare Washington-New York-Boston markets to the hotly competitive Los Angeles-San Francisco corridor. Still, this four-part analysis provides a reasonable framework for analyzing the impact of the proposed alliances.

1. *Medium to long haul city-pairs.* The proposed alliances threaten to collapse six significantly overlapping national competitors into three fully overlapping entities. If all three alliances are implemented, and if each is assumed to coordinate schedules, the national HHI index increases enormously, from about 1202 to 2430. (See Attachment B). It may be assumed safely that the number and/or size of competitive hubs will eventually decrease. This development threatens to substantially lessen competition in that sector of industry where deregulation has been most effective.

Smaller carriers can, moreover, only agree with Southwest's Herb Kelleher, the dean of discount carriers, that this increased consolidation "makes it tough for start-ups to compete with big carriers that can make enough in their monopoly markets to subsidize losses in competitive markets."[3] It follows that proponents of these alliances will have a very heavy burden in showing that their productive efficiencies are sufficient to offset the lessening of both actual and potential competition which would seem to be in the offing.

2. *Short to medium haul non-stop markets.* The negative impact of the alliances may paradoxically be less severe in these markets, where deregulation has been least successful. There is little or no evidence that these six hubs carriers invade each others' spoke markets on any regular basis or vigorously price compete on them. For example, following Spirit's 1996 exit from the Detroit-Boston market, Northwest, with its complete monopoly restored, enjoyed a yield of 42.36 c.p.m. (First Quarter 1997). In the similar Detroit-Philadelphia market, where Northwest faced some competition from fellow hub carrier USAir both before and after Spirit's exit, the yield was about 20% *higher*, 50.81 c.p.m., during the same time frame.

What is clear is that, if the alliances are to be approved, the already compelling case for the Department of Transportation's Competition Guidelines is even stronger. Herb Kelleher's admonition about cross-subsidies applies fully. As I and others have consistently testified, the issue is not deregulation vs. re-regulation but whether deregulation can succeed if the industry continues to concentrate without new entry. Plainly, the greater the concentration, the greater the need for new entry. Predatory tactics which deter new entry must be extirpated.

If the exclusionary tactics of the major carriers in these markets are not held by courts to be outright violations of § 2 of the Sherman Act, the Department of Transportation's authority and actions under 49 U.S.C. § 41712 (formerly § 411 of the Federal Aviation Act) must not only be upheld but strengthened. Each alliance must, moreover, be analyzed with a view to reducing tangible barriers to entry which thwart competition. Consider the situation at Detroit's Metro Airport (DTW), where, according to the GAO, Northwest controls "the vast majority of gates—under long term exclusive leases",[4] including six built for its exclusive use in 1997; Spirit, on the other hand, has no gates at DTW and is charged a premium fee by the Airport Authority each time we land. If Northwest is to own Continental, it seems unthinkable that Northwest should then control Continental's four gates at DTW. On the other hand, were alliance proponents to demonstrate productive efficiencies which would open up scarce gates and slots for use by new entrants in current high fare, non-stop monopoly markets, new entrants and the travelling public would have at least some reason to accept them as pro-competitive.

3. *Leisure markets.* It is more difficult to estimate the competitive impact of the alliances in this market sector. Spirit's principal competitors in the Northwest-Florida markets are Delta and US Airways. Like most other major carriers, they have created, or are in the process of creating, a "carrier-within-a-carrier", whose specific mission is to gain (or re-gain) market dominance in low yield market segments. There is a temptation to say that these types of markets will always be competitive, but, as noted in the discussion of Detroit vs. Minneapolis to Orlando, market structure and competitive performance can differ widely even in leisure markets.

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[3] Wall Street Journal, April 7, 1998.

[4] Statement of John H. Anderson, Jr., GAO/T-RCED-98-112, p. 5 (March 5, 1998)

While such differences will always exist under even the most enlightened government policies, there are dangers galore. These "carriers-within-a-carrier" are specifically aimed at Southwest Airlines, and it should not be assumed that that amazing and admirable compan, (and former client of mine) will be forever successful or continue growing. To the extent that the alliances do produce less national competition overall, and the major carriers are able to focus even more of their energy and resources on defeating Southwest, airline deregulation will be seriously imperiled. Compared to Southwest, the rest of the low fare industry is miniscule, both in market share and competitive effect.

4. *International Traffic (domestic sectors).* The merits and demerits of each of these alliances are not unrelated to international aviation competition. All of these carriers are major international airlines, and all are either members or aspiring members of various global alliances in being or in formation. Whether voluntary or involuntary "carve-outs"[5] will sufficiently negate the reduction in actual and potential competitors will no doubt be hotly disputed in the days ahead, as the Departments of Transportation and Justice proceed upon the full review they have promised of all effects of the alliances.

What is clear is that these alliances make it harder for carriers such as Spirit to compete in the *domestic* marketplace. There are no longer any domestic new entrants with serious international aspirations, not even Southwest. The scope and scale required to compete with global alliances usually dwarfs the competitive capabilities of all but the largest airlines. Nor are smaller U.S. carriers attractive to the international alliances. At Detroit, this means Spirit is competing not just with Northwest, but with KLM, a major international airline, and other Northwest "partners." Spirit's ability to attract international connecting traffic is non-existent. Our competitor not only reaps the monopoly "rents" from U.S. government conferred limited designation route awards (and airport slots), it as well has total dominion over feed and revenues from international traffic—facilitated by antitrust immunity. Indeed, the need to service such traffic is a reason why Northwest has argued that new gates at Detroit should go to it rather than smaller carriers such as Spirit who have no gates at all.

The clear conclusion from the international aspects of the alliance phenomenon is that is even more critical to take the necessary steps to have as level a playing field for domestic new entrants as possible. Since some negative aspects of the competitive landscape probably cannot be fixed in any timely fashion, those that can be, must be addressed "with extra vigor and intelligence."

THE DOT COMPETITION GUIDELINES ARE NECESSARY AND MERIT THE COMMITTEE'S SUPPORT

I would like to finally address briefly the principal criticisms made by major carrier spokespersons of the U.S. Department of Transportation's Competition Guidelines. These are: 1) the Department of Transportation has usurped the responsibility of the Department of Justice; 2) the Guidelines create a new "protected class" of new entrant carriers; 3) the Guidelines lack a "cost basis"; and 4) they are beyond the Department's statutory authority.

1. *Executive Branch responsibility for airline competition.* On this issue, I would like to attempt initially to provide some perspective on how matters reached the point where the DOT had to act. There are then two important themes which need to be developed. First, there is an important role for antitrust with respect to airline hub behavior. Second, the Competition Guidelines properly fulfill a critical role while the Department of Justice does its necessary work.

As described in greater detail below,[6] the architects of airline deregulation clearly foresaw the need for vigorous antitrust oversight over the deregulating industry, and clearly intended joint responsibility within the Executive Branch between the Departments of Justice and Transportation. Insofar as predatory practices are concerned, this process lay largely dormant for many years. To some degree, this inaction reflected a certain climate of legal and economic opinion. Judge Bork's *The Antitrust Paradox* (1978) emerged the same year as the Airline Deregulation Act. It promulgated what became a *de facto* new rule of antitrust: successful predation is so rare that intervention is almost never worth the risk that legitimate competition will be stifled. This viewpoint was embraced in early CAB cases, which were influenced strongly by "contestability theory", but eventually receded. As then Yale

[5] See testimony of John M. Nannes, Deputy Assistant Attorney General, before the Subcommittee on Aviation, Committee on Transportation and Infrastructure, April 30, 1998, pp. 9–10

[6] See enclosure below, p. 2

Dean (and new Executive Vice President of Northwest Airlines) Michael E. Levine wrote in 1987, "contestability analysis is unfortunately inconsistent with much observed behavior since deregulation . . . large holdover incumbents are not easily susceptible to predation, but smaller new entrants are."[7]

A second factor which may have inhibited more timely antitrust action—which might have preempted the need for the Competition Guidelines—is a good deal of confusion about airline costs. Currently, the principal publicly available source of an alleged predator's costs are those reported to the Department of Transportation on a monthly and quarterly basis pursuant to 14 C.F.R. 241. These reports, whose genesis reaches back well before deregulation, comprise *accounting* rather than *economic* costs, and are poorly suited to sophisticated exploration of carrier intent in the context of network operations. Mr. Levine, to his credit, called for research into this area, but, until recently, little was forthcoming.

To the extent that costs are an antitrust issue, I am tentatively persuaded that the correct measure is marginal costs. Again, until recently, it was assumed that airline marginal costs comprised little more than the expenses for an extra sandwich (pretzels?) and a soft drink. To the contrary, as Roger Fones, Chief of the Antitrust Division's Transportation Section, has pointed out in recent speeches, this is a simplistic formulation, overlooking many factors, particularly temporal ones. In fact, major carrier yield management systems compute the relevant costs of accepting or rejecting a potential passenger many thousands of times every hour. We must hope that current Department of Justice inquiries into hub monopolization under §2 of the Sherman Act obtain an appropriate theoretical and factual basis for computing airline marginal costs.

However costs are computed, it would, in my opinion, be a mistake to fixate on them. Pricing below "an appropriate measure of cost" is indeed an element of a claim of predatory pricing, but the means of maintaining hub monopolies extend well beyond that limited issue. A partial list of exclusionary acts, beyond mere pricing, engaged in by certain hub carriers includes:

(a) Domination of exclusive use gates and subsequent refusals to deal or imposition of tie-in requirements;
(b) Hoarding of airport slots;
(c) Short-term dumping of capacity, shifting it from higher yield markets in a manner which can make sense only if the new entrant exits with alacrity; and
(d) Inclusion in corporate discount contracts of severe penalties for use of new entrant carriers.

These practices all tend to restrict output in the long run. Whether considered single or jointly, are they really lawful in the context of the enormous market power created in these hubs? Does anyone believe that a new entrant, *no matter how well capitalized*, could begin to replicate these practices?

Spirit Airlines is certainly not privy to Antitrust Division's current investigation, other than to respond to specific questions contained in a Civil Investigation Demand. We can be sure, however, that the Division will proceed with care, recognizing the importance and complexity of the questions presented. The Committee will recognize, of course, that a determination by the Division that a Sherman Action violation has occurred is only the beginning of a process.

Against this background, it would be wholly irresponsible for the Department of Transportation to ignore its own statutory mandate. Clearly, the industry is concentrating too fast—and new entry is dissipating too quickly—to allow events blithely to take their course. It is one thing to offer constructive criticism of the Guidelines; it is another to deny that there is a problem, then obstruct and delay.

DOT's initiative, moreover, is thoroughly sound as a matter of public policy. Consider the following:

(e) Domestic aviation is protected from foreign competitors by law;
(f) These are tangible barriers to entry which deregulation architects believed would be overcome by now, but which have in fact worsened;
(g) There are industry economies of scope and scale which go well beyond those contemplated by deregulation architects; and
(h) Domestic airline competition is intertwined with a very complex, and not always pro-competitive, bilateral international aviation system.

These factors are not typical of the economy at large. They support a special role for the Department of Transportation, which has unique knowledge of and sometimes control over them, in ensuring the continued success of deregulation.

[7] Yale Journal on Regulation, 393, 472–3

2. *A protected class?* The notion that the Competition Guidelines create a "protected" or "subsidized" class of new entrants is consummate spin, nothing more. The major carriers overlook that they remain free to "match" prices, and retain all of their enormous marketing and other advantages. They are essentially constrained only in their ability to flood the market with seats in a manner which makes sense only if the new entrant is obliged to exit. Consider that, at Detroit, Northwest enjoys the following:

(a) Gate dominance;
(b) A prior merger with its then primary competitor, Republic Airlines, approved over the Department of Justice's objections;
(c) Government conferred monopoly routes to Beijing, London, and Tokyo, which are normally so profitable that the money lost chasing Spirit out of markets such as Detroit-Boston or Detroit-Philadelphia becomes lost in the rounding;
(d) Free slots to the three high-density airports, O'Hare, LaGuardia and Ronald Reagan National;
(e) Overwhelming domination of local travel agencies by its own computer reservation system and of business travelers by its frequent flyer program; and
(f) An antitrust imunized alliance with a major international carrier.

Is Spirit the "protected" or "favored" carrier in Detroit? Does a rule requiring Northwest to pay some attention to short term profit maximization when competing with Spirit make us so?

3. *Absence of a cost standard.* It is true that the Competition Guidelines do not contain an explicit cost standard. I believe this is appropriate because the Department of Transportation is not dealing with predatory pricing per se, but an entire (and carefully described) scenario of exclusionary and monopolistic conduct. That said, it is clear that the Guidelines contain the correct cost standard implicitly: marginal costs.

When a potential hub carrier chooses to take capacity from a higher yielding, less competitive market, and dump it into a newly competitive market at prices which make sense only if the new entrant exits, it has chosen an alternative which increases its costs but not its revenues. When it foregoes any semblance of yield management, sells out a flight to local passengers at a very low fare, and loses the ability to compete for even a small amount of higher yielding connecting traffic, it has made a similar choice. Though under other circumstances, i.e., low barriers to entry with a commensurately low probability of recoupment, a policy mandating a semblance of short term profit maximization may be unnecessary, that is not the case in today's domestic airline industry.

4. *Legal authority.* Nothing in the Guidelines exceeds the DOT's statutory authority or legislative intent. Since at least *Federal Maritime Commission* v. *Swedish American Line*, 88 S. Ct. 1005 (1968), it has been settled that, even in the absence of express statutory language, an agency not only may but should, in its decisions and rules, give effect to antitrust principles. The policy statement relies in any event on far more than an antiquated "consumer protection" statute; 49 U.S.C. §41712 expressly outlaws "unfair methods of competition." Indeed, the Supreme Court found that it was expressly patterned after §5 of the Federal Trade Commission Act. *American Airlines* v. *North American Airlines*, 76 S. Ct. 600 (1956). The DOT's opponents evidently seek to deny the undeniable: Congress has re-enacted 49 U.S.C. §41712 without change on at least four occasions since 1938 without a hint of removing plenary agency authority over predatory or exclusionary practices, including pricing. The express mandate contained in 49 U.S.C. §40101 (a)(7) to thwart "unfair, deceptive, predatory, or anti-competitive practices" remains similarly unchanged. To argue that the Department of Transportation lacks authority to act once it has studied its policy choices, solicited public comment, and made a rational decision, simply won't fly.

Mr. Chairman and members of the Committee, Spirit Airlines and its employees seek nothing more than a minimally fair opportunity to compete in what is, by any measure, a difficult industry for smaller companies. Unlike major carriers, we lack political strength except insofar as the travelling public is beginning to realize that our fight is theirs as well. Spirit is under no illusions about the massive effort which the Air Transport Association and its relevant members will expend in order to defend their "right" to reduce competition. We appeal to the Committee to support the Executive Branch as it seeks to preserve and protect competition in domestic aviation and thus deter the very real prospect of re-regulation.

Attachment "A"

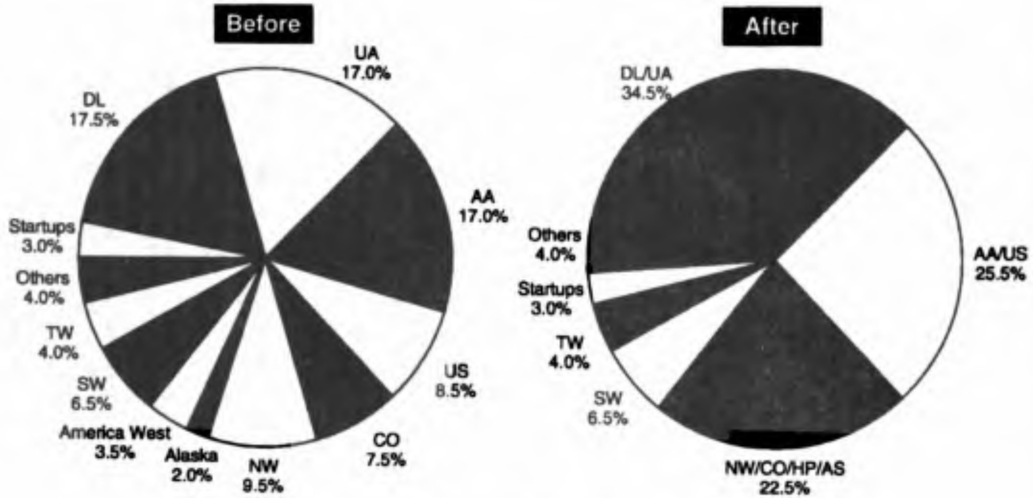
QUARTERLY STATISTICS FOR DOMINANT CARRIER FLIGHTS

TO/FROM ORLANDO AND:		DETROIT				MINNEAPOLIS			
		1Q	2Q	3Q	4Q	1Q	2Q	3Q	4Q
1994:									
	Total Seats	181,366	157,330	149,521	209,732	165,072	118,451	85,919	128,701
	DTW versus MSP	1.10	1.33	1.74	1.63	1.00	1.00	1.00	1.00
1995:									
	Total Seats	213,242	189,653	197,602	282,954	128,834	104,645	85,797	118,912
	Seats Index To 1994	1.18	1.21	1.32	1.35	0.78	0.88	1.00	0.92
	Load Factor (%)	84.5	88.5	82.1	77.4	83.4	77.3	71.2	73.4
	Average Fare ($)	113.42	111.00	96.70	96.09	153.06	188.36	185.26	163.95
	Yield per CPM (¢)	11.78	11.49	10.07	10.02	11.59	12.76	14.05	12.40
	O&D Passengers	81,120	75,060	73,340	103,070	55,140	34,540	24,840	40,970
	Market Share (%)	80.3	80.2	87.5	75.4	77.9	79.8	73.9	72.0
1996:									
	Total Seats	320,958	294,556	275,834	312,947	128,744	110,068	97,680	136,001
	Seats Index To 1994	1.77	1.87	1.84	1.49	0.78	0.93	1.14	1.06
	Load Factor (%)	86.0	84.4	75.5	75.5	88.9	79.2	85.2	72.3
	Average Fare ($)	105.83	99.02	88.33	98.88	175.94	197.78	196.31	174.25
	Yield per CPM (¢)	10.99	10.30	9.22	10.34	13.30	15.02	14.88	13.21
	O&D Passengers	140,190	128,280	105,110	105,420	58,160	39,630	28,040	44,460
	Market Share (%)	78.6	75.8	79.7	76.2	72.8	70.9	70.9	73.1
1997:									
	Total Seats	311,078	287,125	266,297	301,068	126,824	109,673	112,729	135,183
	Seats Index To 1994	1.72	1.82	1.78	1.44	0.78	0.93	1.31	1.05
	Load Factor (%)	83.0	84.8	77.3	83.1	91.0	85.9	79.2	81.1
	Average Fare ($)	127.78	106.13	94.06	n/a	180.55	169.18	180.93	n/a
	Yield per CPM (¢)	13.31	11.28	9.83	n/a	13.62	12.80	13.71	n/a
	O&D Passengers	113,590	109,390	85,390	n/a	81,590	46,780	32,490	n/a
	Market Share (%)	70.4	74.2	74.1	n/a	64.8	72.8	70.8	n/a
1998:									
	Total Seats	342,466	306,056	n/a	n/a	181,388	144,020	n/a	n/a
	Seats Index To 1994	1.89	1.95	n/a	n/a	0.98	1.22	n/a	n/a

Source: U.S. DOT, T-100 Reports and Origin-Destination Passenger Survey.

Attachment B

New Alliances Will Have A Powerful Effect on the Structure of the U.S. Domestic Market



Pre-alliance HHI:	1,202.75
Post-alliance HHI:	2,430
Change:	1,227 Points

Source: DOT Form 41

ENCLOSURE

> "Anyone who says applying antitrust laws is the same as re-regulation is simply ignorant. To preserve competition we need the antitrust laws and vigorous enforcement of the antitrust laws. If this is regulation, then the whole economy is regulated." Dr. Alfred E. Kahn, as quoted in The Detroit Free Press, April 7, 1998, pg. 6A.

Mr. Chairman, everyone on this panel should agree on one thing: as the Airline Deregulation Act reaches the ripe age of 20 this year, the nation can look back with pride on a truly bipartisan reform. Most analysts have indeed concluded that the net benefits of deregulation outweigh the costs, and that the average traveler is much better off. Having come to Washington with Dr. Alfred E. Kahn twenty years ago to play a small role in the deregulation process, I am proud of this result.

To celebrate a policy success does not, however, require us to ignore unanticipated industry trends, including questionable actions by established carriers to eliminate low fare competitors, whose numbers are rapidly decreasing. Furthermore, tangible "barriers to entry" in the airline business are actually getting higher as time has marched on. You can't fly without a place to land. When essential resources such as airport slots and gates are scarce, entrenched, politically savvy companies, with entire staffs whose purpose is to game the regulatory system in their favor, have an undeniable advantage over new entrants.

All of these problems, which combine with particular intensity at single carrier dominated "fortress hubs," have been well documented in the economic literature and in any number of GAO and DOT reports. Some major carriers are extremely upset that responsible government officials are actually attempting to deal with these problems, however reluctantly. Unfortunately, some of these carriers are resorting to unsubstantiated and even personal attacks, *e.g.*, that public servants at DOT are "re-regulators" or "enemies of the free market." To the contrary, Congress and the Executive Branch are to be commended as they begin what should be a serious effort to find practical solutions for current problems, cures which are not "worse than the disease" and which actually help travelers and communities. If these hearings could have one desirable result, it would be that the DOT's opponents offer constructive criticism, not spin.

The architects of airline deregulation did not advocate a simplistic laissez-faire approach to the marketplace. They firmly believed in the importance of procompetitive antitrust principles, and clearly intended their enforcement to be a Federal executive responsibility shared by the Departments of Transportation and Justice. The legislative history of the Airline Deregulation Act could not be clearer: "Apart from the encouragement of new entry, the Board [now the Department of Transportation] is given the companion directive to prevent anti-competitive practices and avoid industry and market concentration. . . . Predatory behavior, market concentration and other economic evils should be avoided and remedied." S. Report 95–631, 95th Cong., 2d Session (1978), p. 52

Subsequent events have justified this concern for effective enforcement. Selective citation of incomplete data can not negate the generally accepted conclusion that concentration in the industry is increasing. In a recent study, "Airline Competition at the 50 Largest U.S. Airports - Update," Salomon Brothers investigated market shares on an airport-by-airport basis (rather than by the customary national averages) and identified "an unprecedented degree of concentration in the airline business." Since that study, Northwest Airlines, the country's fourth largest carrier, has bought a controlling interest in the sixth largest, Continental. According to recent press reports, American Airlines, Delta Airlines, US Airways, and United Airlines, *i.e.*, the vast bulk of the industry by any measure, have been actively discussing how some of them might combine in response. The most recent DOT market share statistics, set forth in Appendix A, show the big getting bigger and wealthier and the small getting smaller and poorer. There is nothing intrinsically wrong with bigness, of course; but those who profess blithe unconcern about these developments are the ones who are encouraging re-regulation of the industry.

Though no one knows what the efficient market structure of the airline industry will ultimately turn out to be, the level of increased concentration mandates a modicum of caution before we assume that oversight of anti-competitive practices is unnecessary. The real issue is not re-regulation vs. deregulation but whether deregulation can ultimately succeed if there is increasing concentration and no new entry into the marketplace. No advocate of deregulation ever dreamed that the industry would evolve without the discipline of actual *and* potential competition.

What all analysts have shown is that the single most effective competitive discipline arises from entry by a low fare competitor, such as Southwest Airlines. For a while, there were several would-be imitators of Southwest but, since the Valujet crash in 1996, and in the wake of predatory practices by major carriers, the number of these new entrants is swiftly declining. Five have ceased operating in the past year. As set forth in Appendix A, any statistics which purport to show that low fare airlines are doing well or expanding reflect at most the success and growth of a very unique company, Southwest Airlines; remove Southwest from the statistics and the low fare airline industry is miniscule, with less than 3% of total domestic revenue passenger miles (RPM's). We cannot base an entire national aviation policy on the expectation that a single company, whose share of the national market grew but modestly from 6.37% in 1996 to 6.41% in 1997, will discipline the entire industry.

Can public policy help? Relaxing the High Density Rule and taking other steps to increase competitive access for new airlines which did not receive "grandfathered" airport slots and gates simply cannot be construed as re-regulation. We should be suspicious when entrenched carriers defend these entry barriers as their unique entitlement.

The more difficult question is whether public policy should intervene to defend smaller carriers from predatory activities, particularly in the pricing area. Again, it is difficult to see how enforcement of antitrust standards on a timely basis can be deemed re-regulation. Indeed, Section 102 of the Airline Deregulation Act (now 49 U.S.C. § 40101(a)(9)) expressly requires the prevention by the Department of Transportation of "unfair, deceptive, predatory, or anti-competitive practices in air transportation."

It should be clearly understood that there is no doubt as to whether predatory pricing and capacity dumping actually occurs in the airline business, only whether there is anything that can usefully be done about it. Whatever one might think of dicta in recent Supreme Court predatory pricing cases,[1] neither of them arose in the context of a service industry largely driven by network economics of scale and scope. The classic treatment of airline predation was written in 1987 by then Yale Dean (and now Executive Vice President of Northwest Airlines) Michael E. Levine, who trenchantly parsed the "puzzling persistence of apparently predatory behavior in deregulated airline markets," noting that "economists committed to a high degree of airline market contestability have historically maintained that predation is doomed to failure and is therefore unlikely because the capital assets involved in airline production are mobile." He concluded, "[t]his contestability analysis is unfortunately inconsistent with much observed behavior since deregulation . . . large holdover incumbents are not easily susceptible to predation, but smaller new entrants are." 4 Yale Journal on Regulation, 393, 472–3

In fact, predatory conduct can be remarkably blatant. At Spirit, we are most familiar with competitive conditions at Detroit, our home base. In a previous statement of my views on this subject to the Transportation Subcommittee of the Senate Appropriations Committee, on March 5, 1998, I recounted some of our experiences, particularly in the Detroit-Philadelphia/Boston markets, competing with Northwest Airlines. If Northwest's actions in throwing us out of those markets is not predation, then there is no such thing as predation. Rather than lengthen this testimony unduly, I am attaching that testimony hereto as Appendix B, for the record.

This Committee should be aware that Northwest continues to pour capacity into markets which Spirit continues to contest. Appendix C shows Northwest non-stop scheduled seats in Detroit-Florida markets form 1994 to the present. In each case, our 1995 entry precipitated a flood of seats, particularly in the Detroit-Orlando (MCO) and Detroit-Fort Myers (RSW) markets. In the latter market, which we have developed assiduously, Northwest has literally doubled its seats over the last year. Mr. Chairman, the message that hub dominant carrier is sending to us is very clear. The message to the travelling public will be equally clear if we choose to leave.

If there is going to be a low fare industry in this country alongside hub dominating "fortress carriers," there is now no choice but to define the line between legitimate, hard-nosed pricing and predatory tactics. This is a difficult but not insurmountable task.

The DOT's proposed Airline Competition Policy Statement (issued April 6, 1998) seems to be directly aimed at the type of egregious behavior outlined above. The Policy Statement zeros in on three specific scenarios which appear wholly irrational in the absence of predatory intent. The DOT's critics have evidently failed to notice that incumbent carriers remain perfectly free to match a new entrant's fares. They are constrained only in their "right" to add so much capacity at the new low fares that their aggregate gross revenues actually decrease even as the costs incurred in providing the new capacity increase, *i.e.*, the dominant carrier's marginal revenue is either negative or totally disproportionate to its marginal costs. Rather than ful-

[1] *Brooke Group* v. *Brown & Williamson Tobacco Corp.*, 113 S. Ct. 2578 (1993) and *Matsushita Electrical Industrial Co.* v. *Zenith Radio Corp.*, 106 S. Ct. 1348 (1986)

minate against *any* attempts to define predatory conduct, the critics should explain why carriers would want to do the things the Department would proscribe, if the intent is not predatory.

SERVICE TO SMALL/MEDIUM COMMUNITIES

Spirit has targeted two small-to-medium commercial airports, Atlantic City, New Jersey (ACY) and Myrtle Beach, South Carolina (MYR) as focus points, and think of ourselves as a specialist in this field. In both cases, we are providing services to large cities, such as Boston or Orlando, where travelers want to travel without going through a major carrier hub each and every time.

The challenge for this type of service is competing with the major hub carrier's superior service frequency, frequent flyer program, override commissions, and extremely aggressive pricing responses. To combat these advantages requires proper aircraft selection, reliable service, and low fares. These tasks are our responsibility. It also requires access to airports which travelers find attractive, which are frequently the High Density Airports. We at Spirit have found the DOT's exemption process excruciatingly frustrating, and have two applications (Myrtle Beach and Melbourne, Florida) which have been on file at DOT for more than seven months. The HDR and other governmentally imposed barriers to entry must be aggressively attacked if service to small/medium size communities is to increase substantially. If these barriers are reduced and proper competition guidelines are in place, service to these communities will be greatly enhanced.

Mr. Chairman, the 881 employees of Spirit Airlines appreciate this opportunity to appear before you today. We seek only a reasonable opportunity to compete.

APPENDIX A

U.S. DOMESTIC SCHEDULED PASSENGER CARRIERS
THE YEAR 1997

		U.S. DOMESTIC NET INCOME (0000)	CARRIER GROUP SHARE OF U.S. DOMESTIC RPM'S
LARGE SCHEDULED PASSENGER CARRIERS (Since 1989)			
	RENO	($11,628)	
	AIRTRAN	($15,344)	
	VALUJET (Merged with AirTran)	($86,833)	
	FRONTIER	($18,945)	
	MIDWAY (Relocated to Raleigh/Durham in 199)	$24,950	
	SPIRIT	$887	
	VANGUARD	($28,246)	
	KIWI INTERNATIONAL	($19,862)	
	EASTWIND	n/a	
	SUN WORLD INTERNATIONAL	n/a	
	PRESTIGE	n/a	
	PRO AIR (Began Operation in 1997)	n/a	
	NO SCHEDULED SERVICE AS OF APRIL 1998		
	PAN AMERICAN	($50,620)	
	CARNIVAL (Merged with Pan Am)	($75,978)	
	WESTERN PACIFIC	($55,601)	
	AIR SOUTH	($15,362)	
	AIR 21	n/a	
	JETTRAIN	n/a	
	NATIONS AIR	n/a	
	TRISTAR	n/a	
	TOTAL	($352,581)	2.98%
MAJORS			
	DELTA	$736,965	
	UNITED	$494,238	
	AMERICAN	$459,291	
	NORTHWEST	$542,455	

U.S. DOMESTIC SCHEDULED PASSENGER CARRIERS—Continued
THE YEAR 1997

		U.S. DOMESTIC NET INCOME (0000)	CARRIER GROUP SHARE OF U.S. DOMESTIC RPM'S
	CONTINENTAL (Proposed NW Alliance)	$218,218	
	AMERICAN WEST (Existing Alliance with CO)	$101,988	
	US AIRWAYS	$1,033,167	
	SOUTHWEST	$317,772	
	TWA	$21,375	
	ALASKA	$74,030	
	TOTAL	$3,999,499	93.15%
ALL OTHER CARRIERS			
	ALOHA	$4,267	
	AMERICAN TRANS AIR	$11,195	
	HAWAIIAN	($1,305)	
	MIDWEST EXPRESS	$24,229	
	TOWER AIR	($17,219)	
	USAIR SHUTTLE INC. (Acquired by US Airways)	$2,794	
	AIR WISCONSIN	$3,669	
	ATLANTIC SOUTHEAST	$50,190	
	CONTINENTAL EXPRESS	$35,877	
	EXECUTIVE AIRLINES	$1,742	
	HORIZON	$2,966	
	MESA	($13,553)	
	TRANS STATES	$24,690	
	ALL OTHERS	$368,353	
	TOTAL	$497,895	3.8%
TOTAL U.S. DOMESTIC		$4,144,812	100%

Source: DOT Form 41
(n/a: no data reported)

U.S. DOMESTIC SCHEDULED PASSENGER CARRIERS REVENUE PASSENGER MILES (000)
1996–97

		U.S. DOMESTIC		U.S. DOMESTIC	
		1996	PERCENT	1997	PERCENT
PASSENGER CARRIERS (Since 1989)					
	RENO	2,756,252	0.648	2,904,166	0.656
	AIRTRAN	929,699	0.219	929,980	0.210
	VALUJET (Merged with AirTran)	1,467,956	0.345	1,467,455	0.332
	FRONTIER	782,861	0.184	1,028,272	0.232
	MIDWAY (Relocated to Raleigh/Durham in 1995)	988,433	0.232	652,219	0.147
	SPIRIT	550,921	0.130	635,502	0.144
	VANGUARD	653,024	0.154	560,149	0.127
	KIWI INTERNATIONAL	815,377	0.192	449,200	0.101
	EASTWIND	63,403	0.015	77,408	0.017
	SUN WORLD INTERNATIONAL	5,445	0.001	23,262	0.005
	PRESTIGE	21,166	0.005	2,593	0.001
	PRO AIR (Began Operation In 1997)	n/a	n/a	n/a	n/a
	NO SCHEDULED SERVICE AS OF APRIL 1998				
	PAN AMERICAN	120,169	0.028	1,013,219	0.229
	CARNIVAL (Merged with Pan Am)	2,025,949	0.476	1,452,070	0.328
	WESTERN PACIFIC	1,519,890	0.357	1,795,773	0.406

U.S. DOMESTIC SCHEDULED PASSENGER CARRIERS REVENUE PASSENGER MILES (000)—Continued
1996–97

		U.S. DOMESTIC		U.S. DOMESTIC	
		1996	PERCENT	1997	PERCENT
	AIR SOUTH	354,044	0.083	196,197	0.044
	AIR 21	53,549	0.013	0	0.000
	JETTRAIN	62,326	0.015	0	0.000
	NATIONS AIR	13,539	0.003	0	0.000
	TRISTAR	n/a	n/a	0	0.000
	TOTAL	13,184,003	3.10%	13,187,465	2.98%
MAJORS					
	DELTA	72,908,095	17.142	77,776,696	17.570
	UNITED	72,491,324	17.044	75,015,635	16.946
	AMERICAN	72,830,395	17.124	74,313,191	16.788
	NORTHWEST	38,998,541	9.169	40,907,227	9.241
	CONTINENTAL (Proposed NW Alliance)	30,423,327	7.153	33,394,454	7.544
	AMERICAN WEST (Existing Alliance with CO)	14,901,359	3.504	15,757,078	3.560
	US AIRWAYS	35,973,074	8.458	37,559,725	8.485
	SOUTHWEST	27,085,487	6.368	28,359,109	6.406
	TWA	19,512,407	4.588	19,736,454	4.459
	ALASKA	9,045,162	2.127	9,545,055	2.156
	TOTAL	394,169,171	92.68%	412,364,624	93.15%
ALL OTHER CARRIERS					
	ALOHA	695,716	0.164	720,868	0.163
	AMERICAN TRANS AIR	4,725,075	1.111	3,184,406	0.719
	HAWAIIAN	3,130,865	0.736	3,312,899	0.748
	MIDWEST EXPRESS	1,239,146	0.291	1,409,103	0.318
	TOWER AIR	1,490,174	0.350	1,678,153	0.379
	USAIR SHUTTLE INC. (Aquired by US Airways)	276,527	0.065	295,878	0.067
	AIR WISCONSIN	524,474	0.123	607,980	0.137
	ATLANTIC SOUTHEAST	877,276	0.206	928,038	0.210
	CONTINENTAL EXPRESS	900,230	0.212	1,176,256	0.266
	EXECUTIVE AIRLINES	40,733	0.010	37,759	0.009
	HORIZON	867,459	0.204	889,943	0.201
	MESA	998,608	0.235	507,575	0.115
	TRANS STATES	426,009	0.100	484,870	0.110
	ALL OTHERS	1,769,258	0.416	1,883,425	0.425
	TOTAL	17,961,550	4.22%	17,117,153	3.87%
TOTAL U.S. DOMESTIC		425,314,724	100%	442,669,242	100%

Source: DOT Form 41
(n/a: no data reported)

APPENDIX B

TESTIMONY OF MARK S. KAHAN

BEFORE THE TRANSPORTATION SUBCOMMITTEE OF THE APPROPRIATIONS COMMITTEE OF THE U.S. SENATE

MARCH 5, 1998

Mr. Chairman, my name is Mark Kahan. I had the privilege of coming from New York to the Civil Aeronautics Board in 1977 with Chairman Alfred E. Kahn to assist in deregulating the airlines, and am honored to be appearing before you today as Vice Chairman and Chief Operating Officer of Spirit Airlines, Inc. Spirit is among the oldest of currently operating post-deregulation carriers. We began service in 1989 and, until 1996, were profitable every quarter.

As the Airline Deregulation Act reaches the ripe age of 20 this year, the nation can look back with pride on a truly bipartisan reform. How many today argue that Washington bureaucrats are better equipped than the marketplace to decide precisely which city pairs deserve airline service, the efficient number of carriers that can fly a route, or the exact price to be charged? Most analysts have concluded that the net benefits of deregulation outweigh the costs, and that the average traveler is much better off. Having been part of the deregulation process, I am proud of this result.

We cannot, however, ignore some serious adverse industry trends, including loss of service to smaller communities, extreme price differentials between business and leisure travelers, and actions by established carriers to eliminate low fare competitors. Furthermore, tangible "barriers to entry" are actually getting higher, as time has marched on. When essential resources such as airport slots and gates are scarce, entrenched, politically savvy companies, with entire staffs whose purpose is to game the regulatory system in their favor, have an undeniable advantage over new entrants.

All of these problems, which combine with particular intensity at single carrier dominated "fortress hubs," have been well documented in the economic literature and in any number of GAO and DOT reports. There is nevertheless frustration as Executive Branch spokesmen have expressed understanding and concern, but with little action. We at Spirit are pleased that the logjam seems to be breaking. The Departments of Transportation and Justice are to be commended as they begin what should be a serious effort to find practical solutions for current problems, cures which are not "worse than the disease" and which actually help travelers and communities.

Several of the major carriers argue that current Congressional initiatives such as this hearing—designed to improve competitive conditions in the airline marketplace—are a *de facto* effort to re-regulate the industry. Mr. Chairman, this kind of diversionary thinking should be firmly rejected. These carriers overlook that the actions under consideration are themselves substantially deregulatory in nature. To understand this, we might reflect on how Delta Airlines and US Airways can charge $404.00 for an unreserved round trip coach ticket between New York and Washington, while a comparable ticket between San Francisco and Los Angeles costs $237.00. The answer does not lie in differing costs. The New York-Washington trip, 216 air miles, is actually much shorter than San Francisco-Los Angeles, at 338 miles. All the airports in question are highly congested; the passenger volumes are ample to exploit the relevant economies of scale. Why are New York-Washington passengers paying so much more?

The essential answer is straight-forward: The US Air-Delta duopoly faces almost no actual or potential competition in this city pair because a regulation, called the High Density Rule (HDR), rigidly excludes any new entrants at New York's La Guardia and Washington's National Airport, among others. The HDR was designed in 1967 to eliminate runway delays, before the advent of wide body aircraft and during the era of rigid mileage based price controls. It has long since become a tool of monopoly whose anti-competitive consequences have managed to evade the level of skepticism that outdated regulations are supposed to receive in 1998. If current efforts in Congress have one central theme, it is the relaxation of the HDR. That some major carriers think such ideas are "re-regulation" is more than a little ironic.

It should be understood that the architects of airline deregulation did not advocate a simplistic laissez-faire approach to the marketplace. They firmly believed in the importance of pro-competitive antitrust principles, and clearly intended their enforcement to be a Federal executive responsibility shared by the Departments of Transportation and Justice.

Subsequent events have justified this concern for effective enforcement. Concentration in the industry continues increase. In a recent report, "Airline Competition at the 50 Largest U.S. Airports - Update," Salomon Brothers investigated market shares on a route-by-route basis (rather than by the customary national averages) and indentified "an unprecedented degree of concentration in the airline business." This trend, which helps explain some of the recent real increases in airline fares, is worrisome. Though no one knows what the efficient market structure of this dynamic industry will ultimately turn out to be, this level of increased concentration does suggest the need for a modicum of caution before we assume that oversight of anti-competitive practices is unnecessary.

The real issue is not re-regulation vs. deregulation but whether deregulation can ultimately succeed if there is increasing concentration and no new entry into the marketplace. No advocate of deregulation ever dreamed that the industry would evolve without the discipline of actual *and* potential competition. Quite the contrary: Analysts in 1978 posited extremely low barriers to entry into airline markets, believing aircraft to be the most mobile of assets. Now, as Salomon Brothers and others have shown, concentration has increased to the point where actual competition on most non-stop routes is limited to carriers with a hub at one end, leaving most consumers with a maximum of one or two choices. Many small-to-medium sized communities have lost service altogether. Under these circumstances, passengers with relative inelastic demand, primarily business travelers, and travelers from smaller communizes, will pay an enormous fare premium.

What all analysis has shown is that the single most effective competitive discipline arises from entry by a low fare competitor, such as Southwest Airlines. (Its competition largely accounts for the low fares in the Los Angeles-San Francisco market noted earlier). For a while, there were several would-be imitators of Southwest but, since the Valujet crash in 1996, and in the wake of predatory practices by major carriers, the number of these new entrants is swiftly declining. The number of new scheduled passenger carriers certificated by the Department of Transportation declined from 8 in 1996 to 3 in 1997. Only a few of these ever began operating and even fewer continue to do so. This is an unprecedented situation which should be a source of genuine concern.

Can public policy help? To an unreconstructed deregulator like myself, the prospect of real re-regulation is dismaying. But, relaxing the High Density Rule and taking other steps to increase competitive for new airlines who did not receive "grandfathered" airport slots and gates simply cannot be construed as re-regulation. We should be suspicious when entrenched carries defend these entry barriers as their unique entitlement.

The more difficult question is whether public policy should intervene to defend smaller carries from predatory activities, particularly in the pricing area. Again, it is difficult to see how actual enforcement of antitrust standards on a timely basis, which is all current legislative proposals would require, can be deemed re-regulation. Indeed, Section 102 of the Airline Deregulation Act (now 49 U.S.C. §4101(a)(7)) expressly requires "the prevention [by the Department of Transportation] of unfair, deceptive, predatory, or anti-competitive practices in air transportation."

It should be clearly understood that there is no doubt as to whether predatory pricing and capacity dumping actually occurs, only whether there is anything that can usefully be done about it. In fact, predatory conduct can be remarkably blatant. At Spirit, we are most familiar with competitive conditions at Detroit, our home base. On December 15, 1995 we began a single DC–9 (about 100 passengers) daily roundtrip flight from Detroit to Philadelphia, offering fares as low as $49 one-way and extending in tiers to $139.00. Northwest, the dominant carrier at Detroit, did not "match" immediately. Instead, it continued on a previous strategy to raise its fares in that market.

According to DOT statistics, Northwest's Detroit-Philadelphia yield in the first quarter of 1996 was 42.82 cents per mile (cpm), 11% over the previous year. This route was profitable, and our low fares developed a passenger base which otherwise would not have traveled. Encouraged by this success, on April 15, 1996, Spirit began a single DC–9 roundtrip from Detroit to Boston. The introductory fare was $69.00 one-way, with our highest fare $159.00. Northwest had, however, evidently decided to ensure that our success at Philadelphia not be repeated. It immediately "matched" by making the $69.00 introductory fare available on all of its eleven daily flights and on virtually all coach seats. Northwest's cent per mile in the second quarter of 1996 in the Detroit-Boston market fell to 17.09 cpm, 52% below the previous year.

On May 11, 1996, the Valujet tragedy unfolded in the Everglades. As the Committee is aware, the publicity surrounding the crash and the FAA response to it had a short run, debilitating affect on public confidence in smaller airlines. In June 1996, we began hearing rumors that "Northwest will unload on Spirit" in the Detroit-Philadelphia market. And that is what happened. On June 30, 1996 Northwest "matched" Spirit's $49.00 fare in the Detroit-Philadelphia market on all flights and simultaneously increased its capacity by more than 15% over the previous year. Its yield dropped from 37.85 cpm in the third quarter of 1995 to 17.59 cpm, a drop of more than 54%. The story is detailed on Charts 1–2 (Philadelphia) and 3–4 (Boston).

It is probable that Northwest sacrificed out-of-pocket not less than $10 million because of its fare decreases and capacity increases in the Detroit-Boston and Detroit-Philadelphia markets in the third quarter of 1996 alone. These actions clearly made no sense unless Northwest was confident that Spirit would be obliged to exit the market. And they were correct. On September 8, 1996 Spirit flew its last flight to Boston. On September 30, 1996, we flew our last flight to Philadelphia. Within a few months, a passenger traveling from Detroit to Boston would pay a one-way fare of $460.00, an increase in excess of 500%. The lowest, heavily restricted discount fares were $263.00 roundtrip (Thursday through Monday) and $219.00 (Tuesday and Wednesday, only). A passenger flying from Detroit to Philadelphia on Northwest paid a one-way fare of $381.00. The heavily restricted Thursday through Monday roundtrip fare would have been $181.00 and the Tuesday and Wednesday fare $151.00. The loser was first and foremost the traveling public, and of course Spirit as well.

As we studied the matter more closely, it became clear that Northwest was not taking extraordinary actions only in the few East Coast markets in which we attempted to compete. In the fall of 1994, Spirit entered into the Detroit-Orlando market. Again, it met initial success. However, as you can see from the accompanying graph (Chart 6), Northwest subsequently flooded the market with seats. During the third quarter, 1994, Northwest had offered 150,000 seats. After our entry, during the third quarter of 1996, its capacity exceeded 275,000 seats, an amazing 40% rise for a mature market such as Detroit-Orlando. (During this entire period, as set forth on Chart 7, Northwest's overall domestic system was exceedingly stable from both a capacity and yield standpoint.) The carrier simultaneously dropped its average yield to 9.22 cpm, the lowest it has been in recent history and plainly below a remunerative level (Chart 5). You will pardon us for believing that Northwest tried to put Spirit out of business in the third quarter of 1996.

Charts 1–4 confirm that in the Detroit-Boston and Detroit-Philadelphia markets, Northwest has reduced its capacity since Spirit's exit and, of course, raised fares drastically. A slightly different but no less ominous picture emerges in Detroit-Orlando, where we have chosen to draw the line and attempted to defend ourselves. Northwest has steadily poured on capacity so that it now offers almost 350,000 seats in the most current quarter, almost doubling its schedule over a two-year period. Mr. Chairman, these tactics only make sense if the big guy is trying to tell the little guy that no step is too extreme, no matter how unprofitable or costly, in order to "hold on to our passengers." With all deference, some steps are indeed too extreme and do cross the line into illegality. If there is going to be a low fare industry in this country alongside hub dominating "fortress carriers," then it is important to define the line between legitimate, hard-nosed pricing and predatory tactics. Unless public policy does not want competition in markets like Detroit-Philadelphia, this work must be done. There is now no choice.

Even in the absence of predatory pricing and capacity dumping, issues previously identified by GAO and DOT as barriers to entry need urgently to be addressed. Mr. Chairman, Spirit Airlines enplaned over 19,000 passengers from Detroit in December, 1997, without a gate. We go from one carrier to the next seeking unused space for which we may contract at odd times of the day. Because we lack a gate, we are not entitled under the rules of the local airport authority to be a "signatory airline." Because Spirit is not a signatory airline, we are assessed a 25% surcharge over the rates charged to other carriers including, obviously, our major competitor. Aside from totally constraining our ability to grow any furler, this Catch-22 situation violates the following basic economic and legal principles:

1. *It is discriminatory.* When a Spirit MD–80 lands, it certainly costs no more than a MD–80 operated by our competitor. In fact, it costs less. The costs of a hubbing airport like Detroit are largely driven by the need to have enough facilities available to meet the intense demands of the connecting banks which occur sporadically throughout the day. We at Spirit are more than willing to schedule around the peaks of Northwest's hub system, if we have the gates and flexibility to do so. Charging more when costs are less is the very essence of economic discrimination.
2. *It degrades our service.* Because we are obliged to obtain such gate space as is available from other carriers during periods of their slack use, our passengers can be delayed through no fault of our own. If the carrier with which we are dealing has a delay, our plane and passengers must wait until space becomes available.
3. *It raises our costs.* Not only do we have to pay the discriminatory landing charge, we must pay very high gate use fees. The carriers who accommodate us are not charitable institutions. We pay handsomely as these carriers quite understandably take advantage of our predicament. No one at Detroit, however, has ever charged us as much as Northwest.

Interestingly, although Northwest has always taken the position that it is fully utilizing its gates at Detroit, it permitted Spirit to use one of these gates for our flight to Atlantic City, a route where we do not compete with them. We were recently obliged, against our strongest wishes, to move even this flight because of obligatory "tied" deicing charges which ranged up to 10 times higher than those imposed by other suppliers. It is well recognized in the economic literature that deliberately raising a rival's costs, particularly with respect to an essential facility like gates, is itself predatory.

Mr. Chairman, I have elaborated primarily on predatory practices, gates and airport slots because they are the most fundamental and direct barriers to entry. They are not the only ones. To the extent requested by the Committee and staff, we will be pleased to offer for the record our real world experiences with respect to computer reservation systems, frequent flyer programs, commission overrides, and kindred practices.

In conclusion, I wish to emphasize that Spirit and its 881 employees seek no special favors from anyone. For the last eight years, we have competed in the marketplace each and every day and we are committed to the success of Airline Deregulation. We commend the Committee on its initiative in fostering this hearing. The competitive issues we have discussed are fixable if the nation has the will and desire to make the deregulation process work to its fullest potential.

CHART 1

Quarterly Statistics for Dominant Carrier Flights
Between Detroit and Philadelphia

	1q95	2q95	3q95	4q95	1q96	2q96	3q96	4q96	1q97	2q97	3q97	Total
Onboard Passengers	77,984	96,726	100,966	93,403	76,290	98,618	132,018	114,400	76,321	95,173	88,156	1,049,056
Total Seats	133,100	148,036	149,507	147,794	133,243	146,016	170,675	190,371	151,713	157,843	153,434	1,681,731
Load Factor (%)	58.6	65.3	67.5	63.2	58.5	67.5	77.4	60.1	50.3	60.3	57.5	62.4
O&D Passengers	40,520	45,660	47,760	46,850	36,350	43,140	66,810	62,640	39,700	47,710	n/a	476,730
Market Share (%)	68.0	69.0	69.1	67.6	58.2	53.2	62.2	69.8	65.7	62.6	n/a	64.4
Average Fare ($)	163.73	176.23	166.12	170.46	222.23	196.97	79.07	128.67	230.64	196.32	n/a	165.26
Yield per CPM (4)	36.23	38.64	36.70	37.63	49.03	43.47	17.45	28.41	50.81	43.29	n/a	36.44

Source: U.S. DOT, T-100 Reports and Origin-Destination Passenger Survey

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CHART 2

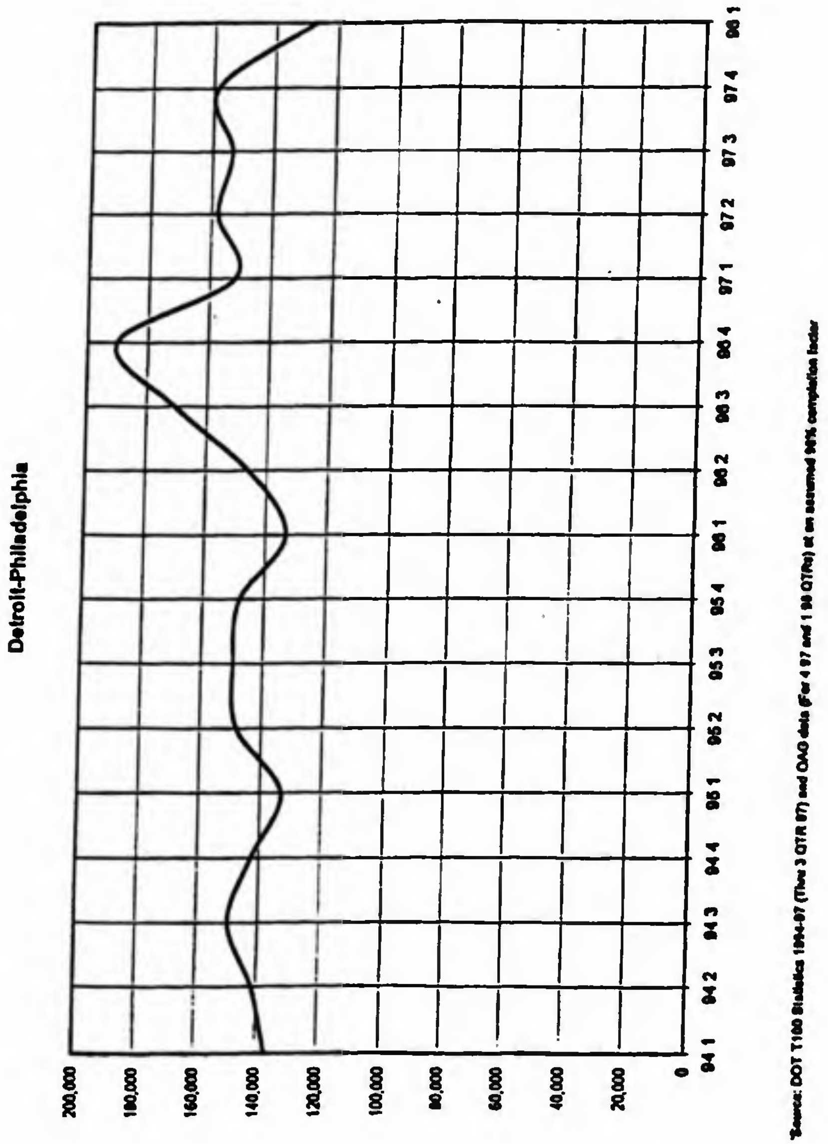

Detroit-Philadelphia
200,000
180,000
160,000
140,000
120,000
100,000
80,000
60,000
40,000
20,000
0
94 1
94 2
94 3
94 4
95 1
95 2
95 3
95 4
96 1
96 2
96 3
96 4
97 1
97 2
97 3
97 4
98 1

CHART 3

Quarterly Statistics for Dominant Carrier Flights Between Detroit and Boston

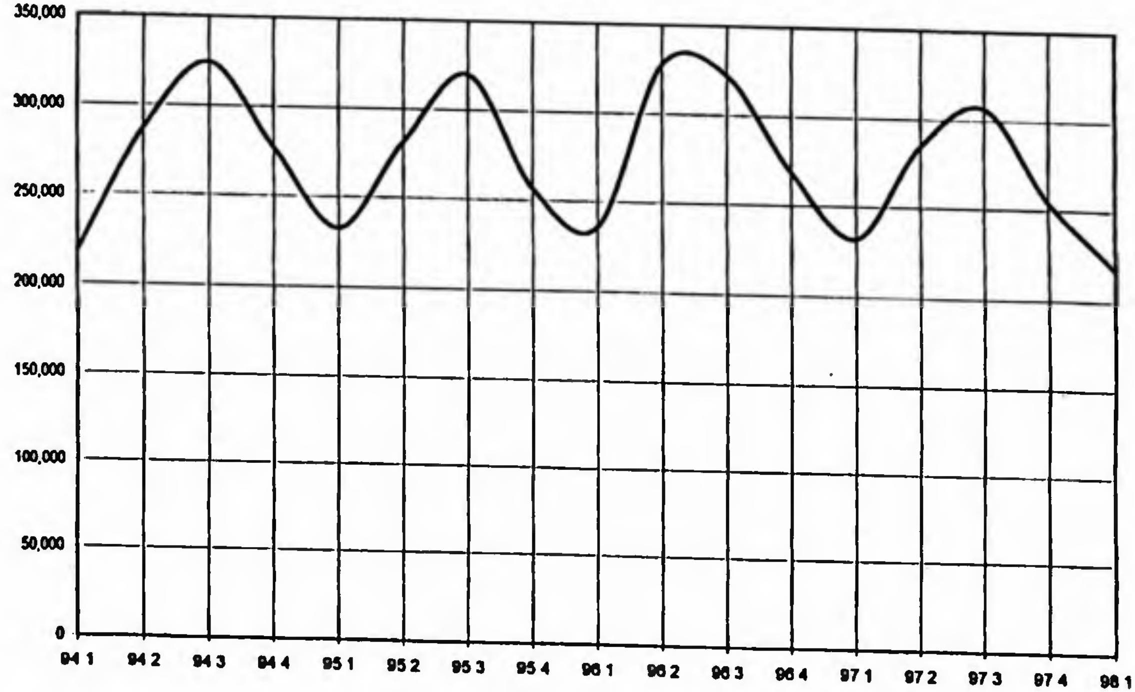
	1q95	2q95	3q95	4q95	1q96	2q96	3q96	4q96	1q97	2q97	3q97	Total
Onboard Passengers	139,756	188,506	212,719	167,522	127,520	224,353	252,734	173,347	123,179	172,014	188,938	1,970,590
Total Seats	232,523	281,545	319,662	256,464	235,878	327,974	322,039	268,449	232,077	284,895	306,550	3,068,058
Load Factor (%)	60.1	67.0	66.5	65.3	54.1	68.4	78.5	64.6	53.1	60.4	61.6	64.2
O&D Passengers	40,140	60,280	87,900	59,700	45,250	97,340	119,050	76,080	48,240	65,540	n/a	679,530
Market Share (%)	84.3	89.4	90.8	87.4	89.3	91.7	91.5	89.2	89.1	90.0	n/a	89.7
Average Fare ($)	230.70	206.20	191.84	209.42	258.83	106.05	100.01	169.52	267.54	218.14	n/a	176.45
Yield per CPM (4)	36.38	32.58	30.31	33.15	40.92	16.78	15.84	26.80	42.36	34.48	n/a	28.21

Source: U.S. DOT, T-100 Reports and [redacted]

GKMG Consulting Services, Inc.

CHART 4

Detroit-Boston



*Source: DOT T100 Statistics 1994-97 (Thru 3 QTR 97) and OAG data (For 4 97 and 1 98 QTRs) at an assumed 98% completion factor

CHART 5

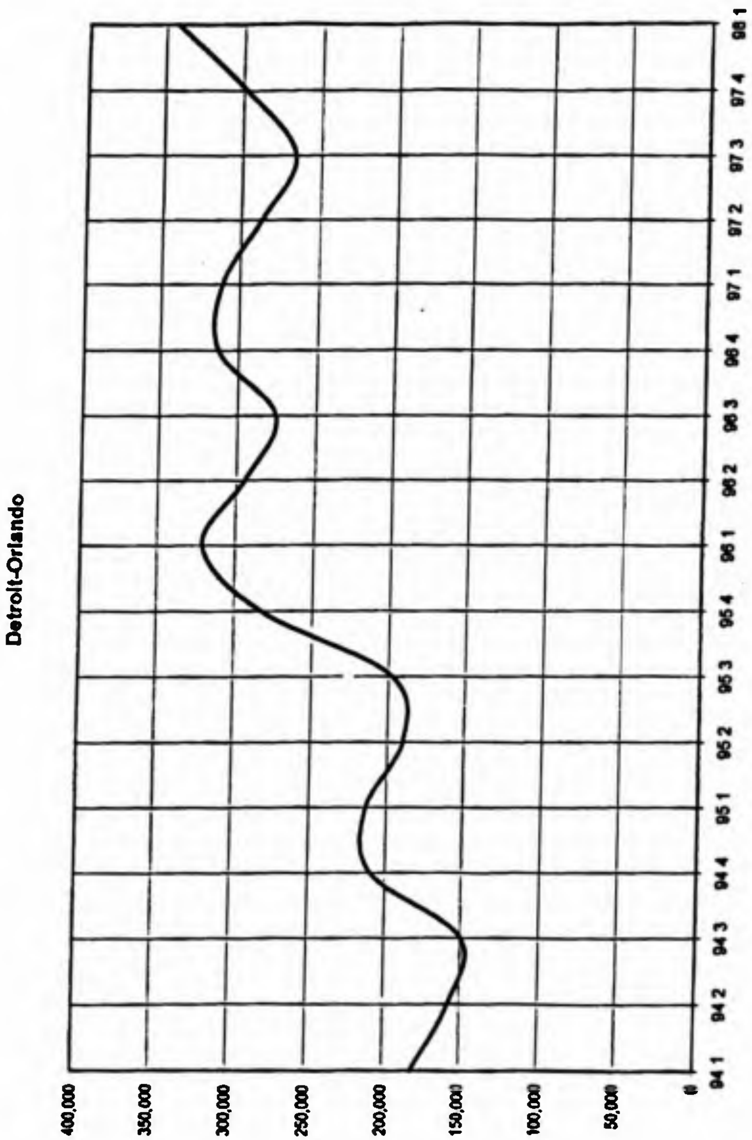
Quarterly Statistics for Dominant Carrier Flights
Between Detroit and Orlando

	1q95	2q95	3q95	4q95	1q96	2q96	3q96	4q96	1q97	2q97	3q97	Total
Onboard Passengers	180,135	167,937	182,153	215,920	275,973	248,604	208,217	236,224	258,315	243,469	205,867	2,405,737
Total Seats	213,242	189,653	197,802	282,954	320,956	294,556	275,834	312,947	311,078	287,125	266,297	2,952,244
Load Factor (%)	84.5	88.5	82.1	77.4	88.0	84.4	75.5	75.5	83.0	84.8	77.3	51.5
O&D Passengers	81,120	75,060	73,340	103,070	140,190	128,260	105,110	105,420	113,590	109,390	n/a	1,034,570
Market Share (%)	60.3	60.2	67.5	76.4	78.6	75.5	79.7	78.2	70.4	74.2	n/a	72.0
Average Fare ($)	113.42	111.00	96.70	96.09	105.83	99.02	88.33	96.88	127.78	108.13	n/a	104.51
Yield per CPM (¢)	11.78	11.49	10.07	10.02	10.99	10.30	9.22	10.34	13.31	11.28	n/a	10.90

Source: U.S. DOT, T-100 Reports and Origin-Destination Passenger Survey

GKMG Consulting Services, Inc.

CHART 6



*Source: DOT T100 Statistics 1994-97 (Thru 3 QTR 97) and OAG data (For 4 97 and 1 98 QTRs) at an assumed 98% completion factor

CHART 7

Quarterly Statistics for Northwest Airlines
U.S. Domestic

	1q95	2q95	3q95	4q95	1q96	2q96	3q96	4q96	1q97	2q97	3q97	Total
Onboard Passengers	9,732,731	10,902,331	11,451,401	10,464,422	10,266,362	11,648,677	12,041,123	10,907,414	10,756,008	11,763,243	12,371,706	122,217,418
Total Seats	16,047,082	16,530,609	16,961,857	16,746,163	16,481,412	17,236,216	17,816,376	17,447,364	17,003,030	17,406,703	17,736,261	187,422,018
Load Factor (%)	60.2	70.5	72.5	66.4	67.6	70.6	71.6	66.8	68.8	72.0	73.8	
O&D Passengers	12,576,820	13,817,600	14,072,780	13,737,600	13,341,340	14,794,720	16,196,520	14,343,840	14,197,360	15,294,980	n/a	141,371,840
Market Share (%)	7.38	7.39	7.45	7.52	7.36	7.43	7.65	7.48	7.61	7.54	n/a	7.5
Average Fare ($)	167.15	170.71	170.14	165.47	184.50	183.91	177.68	169.95	184.92	173.32	n/a	174.89
Yield per CPM (¢)	14.28	14.94	14.18	14.86	15.71	15.76	14.96	14.73	15.58	14.86	n/a	14.99

Source: U.S. DOT, T-100 Reports and Origin-Destination Passenger Survey.

NORTHWEST NONSTOP SCHEDULED SEATS

DTW-MCO

QTR	SEATS	Yearly Index (1994=100)	TOTAL YR SEATS
94 1	181,366	1.00	
94 2	157,330	1.00	
94 3	149,521	1.00	
94 4	209,732	1.00	697,949
95 1	213,242	1.18	
95 2	189,653	1.21	
95 3	197,602	1.32	
95 4	282,954	1.35	883,451
96 1	320,956	1.77	
96 2	294,556	1.87	
96 3	275,834	1.84	
96 4	312,947	1.49	1,204,293
97 1	311,076	1.72	
97 2	287,125	1.82	
97 3	268,297	1.78	
97 4	301,068	1.44	1,165,568
98 1	342,488	1.89	
98 2	308,056	1.95	
98 3			

DTW-TPA

QTR	SEATS	Yearly Index (1994=100)	TOTAL YR SEATS
94 1	133,378	1.00	
94 2	121,881	1.00	
94 3	99,609	1.00	
94 4	111,298	1.00	465,966
95 1	136,212	1.01	
95 2	133,232	1.09	
95 3	117,146	1.18	
95 4	136,874	1.23	522,264
96 1	176,224	1.32	
96 2	146,134	1.20	
96 3	128,825	1.29	
96 4	180,827	1.62	632,010
97 1	182,529	1.37	
97 2	150,884	1.24	
97 3	123,134	1.24	
97 4	156,533	1.40	611,880
98 1	230,300	1.73	
98 2	184,346	1.51	
98 3			

NORTHWEST NONSTOP SCHEDULED SEATS

DTW-RSW

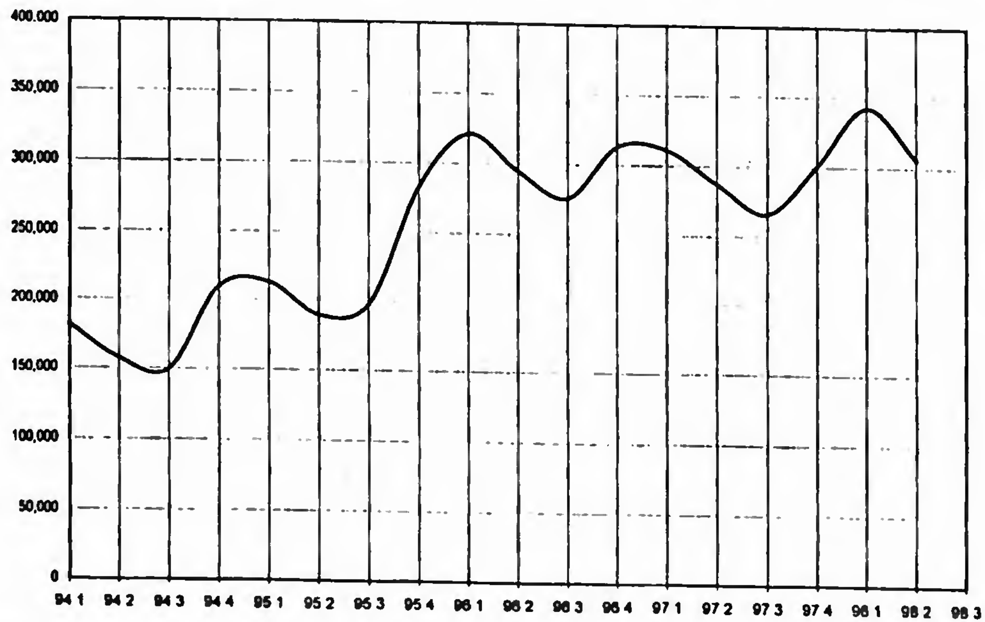
QTR	SEATS	Yearly Index (1994=100)	TOTAL YR SEATS
94 1	107,099	1.00	
94 2	70,731	1.00	
94 3	48,166	1.00	
94 4	90,630	1.00	316,626
95 1	109,610	1.03	
95 2	86,991	1.23	
95 3	61,496	1.28	
95 4	111,806	1.23	370,103
96 1	113,222	1.06	
96 2	94,457	1.34	
96 3	69,086	1.43	
96 4	106,159	1.17	382,924
97 1	130,046	1.21	
97 2	92,611	1.31	
97 3	60,227	1.25	
97 4	106,122	1.17	389,006
98 1	196,864	1.84	
98 2	159,636	2.26	
98 3			

DTW-FLL

QTR	SEATS	Yearly Index (1994=100)	TOTAL YR SEATS
94 1	109,964	1.00	
94 2	67,527	1.00	
94 3	44,940	1.00	
94 4	78,661	1.00	301,092
95 1	97,460	0.89	
95 2	77,403	1.15	
95 3	67,536	1.50	
95 4	100.552	1.28	342,951
96 1	117,531	1.07	
96 2	83,275	1.23	
96 3	68,664	1.53	
96 4	103,471	1.32	372,941
97 1	128,768	1.17	
97 2	77,096	1.14	
97 3	59,824	1.33	
97 4	102,940	1.31	368,626
98 1	150,128	1.37	
98 2	112,592	1.67	
98 3			

NORTHWEST NONSTOP SCHEDULED SEATS

Detroit-Orlando



Source: DOT T100 Statistics 1994-97 (Thru 4 QTR 97); OAG data (For 1st and 2nd 98 QTRs)

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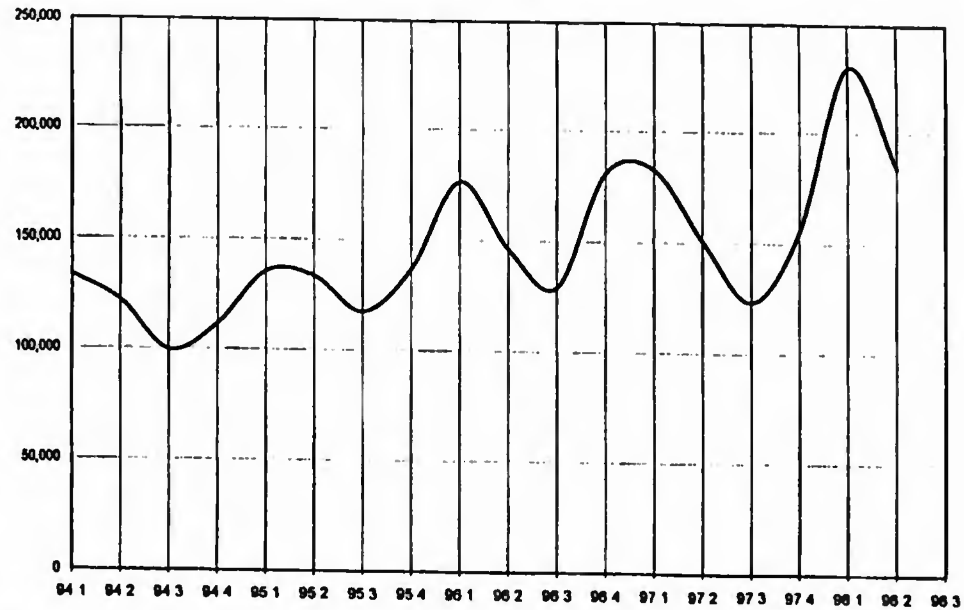
NORTHWEST NONSTOP SCHEDULED SEATS

Detroit-Tampa



Source: DOT T100 Statistics 1994-97 (Thru 4 QTR 97); OAG data (For 1st and 2nd 98 QTRs)

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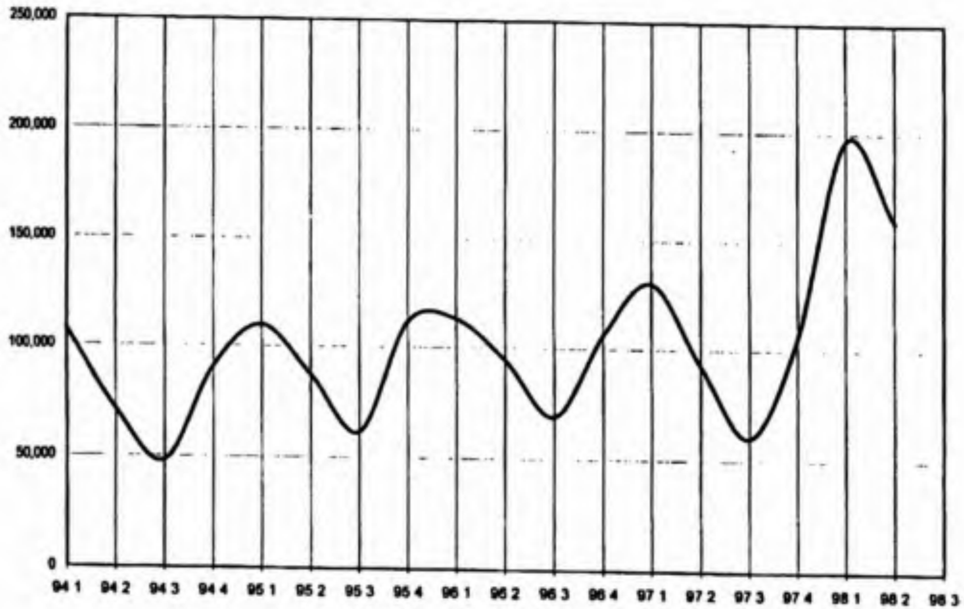
KPMG Consulting Services, Inc.

NORTHWEST NONSTOP SCHEDULED SEATS

Detroit-Fort Myers



Source: DOT T100 Statistics 1994-97 (Thru 4 QTR 97); OAG data (For 1st and 2nd 98 QTRs)

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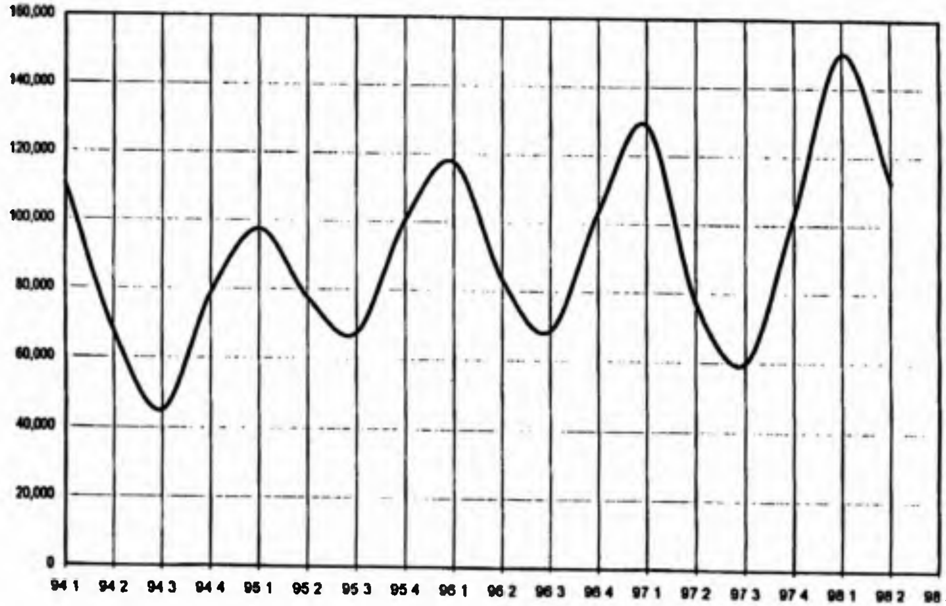
[illegible] Consulting Services, Inc.

NORTHWEST NONSTOP SCHEDULED SEATS

Detroit-Fort Lauderdale



Source: DOT T100 Statistics 1994-97 (Thru 4 QTR 97); OAG data (For 1st and 2nd 98 QTRs)

4/15/98

GKMG Consulting Services, Inc.

Mr. HYDE. Well, Mr. Kahan, we have Mr. Hudson and Mr. Karaganis to hear from but I'm constrained to interrupt and ask you, you know, those of us who think we need a third airport in the northern Illinois—and Peotone is just a location, it doesn't have to be there. But we hear over and over again from United and from American that nobody wants to fly out there. How can you have an airport that no airlines wants. As I've just heard you, you'd like access. You can't get any gates at O'Hare. Am I right?

Mr. KAHAN. Our problem in Chicago is a little different than our problem in Detroit, Sir. We can't get slots at O'Hare, so we don't even worry about getting gates. That's impossible. We have started operating to Midway, but Midway is a very constrained airport, Sir. We actually have to put special engines on our airplanes. And it's really very difficult to operate——

Mr. HYDE. You would take advantage of a third airport if it's feasible. I mean you'd like a shot at that, wouldn't you?

Mr. KAHAN. Yes, Sir.

Mr. HYDE. And don't you think there are other airlines, too, that are shut out because of the non-availability of gates and slots, and there's just so much space up in the air.

Mr. KAHAN. Sir, if there were an airport in Chicago that we were comfortable operating into, we would be there in a big way. And I am certain that that would be the case with other new entrants as well.

Mr. HYDE. Thank you very much, and forgive my interrupting the continuity.

Mr. Hudson.

STATEMENT OF PAUL HUDSON, EXECUTIVE DIRECTOR, AVIATION CONSUMER ACTION PROJECT, WASHINGTON, DC

Mr. HUDSON. Thank you, Chairman Hyde, Mr. Conyers, and members of the committee. The Aviation Consumer Action Project was founded by Ralph Nader in 1971. We seek to protect the rights and interests of the flying public in areas of safety, cost, and convenience. Thank you for inviting me here to testify today on what we believe is probably the most important economic issue in commercial aviation in this decade—the state of competition in the airline industry.

In late 1997, it became clear that the airline industry had fully recovered from its financial problems of the early 1990's. Its operating costs were down. Its capacity utilization was up; it was expanding overseas at a great rate. Ticket prices were up 18 percent in 1997 alone, and profits were at record levels. But all airlines were not doing well. Regional and smaller airlines, with the exception of Southwest, were losing money and going out of business. How could this be in boom times in the U.S. and around the world in aviation, that there was a net loss in airlines as more exited than entered the business? How could it be that competition was leading to much higher consumer prices, more crowded flights, and coupled with lower costs for the airlines? The second highest operating cost of airlines is fuel. That's gone down in the last 8 months by at least 20 percent.

The answer is that major airlines have figured out how to beat the system of free market competition that Congress thought it enacted in 1978. Major carriers have been busy undermining free markets in a variety of ways. It's complicated, but in essence, it involves the use of unfair competition that limits consumer access to low-cost transportation. It includes refraining from vigorous price competition, engaging in various forms of what some people consider commercial bribery or coercion. It limits consumer access to price information, utilizes discriminatory pricing, deceptive advertising to a maximum extent possible.

Most of these methods are legal because Congress, in its enthusiasm to decontrol the airlines, exempted them from many Federal and virtually all State and local economic regulation. In our view, the Congress left half the job undone. Rules for fair competition were never really enacted in the airline industry. Instead the job was given over in a general way to the U.S. Department of Transportation and to a lesser extent the Department of Justice. Which, in our view, have been ineffective, to date, in stopping these anticompetitive practices.

So, for example, major airlines can control consumer access by locking up most of the gates at major airports with long-term leases and financial arrangements that give them veto power over airport expansion or even the use of competing airports and new airport construction. Major U.S. airports are the choke points through which most of the Nation's air traffic, as well as much of the world's must pass. Other methods include bait and switch advertising of low-cost air travel with little or no supply. Airlines are now exempt from State and local deceptive advertising laws, and making regional airlines offers to become partners, we would consider them vassals of major carriers or essentially be put out of business. Code sharing allows one airline to sell transportation on another partner airline as though it were its own, and no law requires disclosure or limit special deals between airlines that should be vigorous competitors, not cooperators.

Now six major carriers controlling about 80 percent of all of the seats in the U.S. have announced they will form three airline alliances by this summer. According to some industry witnesses at the April 30th hearing that I attended before the House Aviation Subcommittee, this will effectively lead to only four major carriers, not just in the U.S., but in the world. And we believe this could happen within a year. Accordingly, a competition problem is now a crisis or emergency requiring immediate action. Without congressional action in this session, we believe that the major alliances will be a done deal by the fall. And the era of airline competition will have ended, replaced by three or four global corporate cartels.

Accordingly, we recommend that Congress enact, one, a 6 to 12-month moratorium on airline alliances; two, draft and enact an Airline Competition and Consumer Protection Act to establish rules of fair competition for the industry; and, three, enact a Federal anti-price gouging law to cap airfares at 50 cents per passenger mile, which is approximately five times the break even point. With bipartisan cooperation this can be done.

In my testimony, I go into a variety of the policies that we believe should be incorporated into a Airline Competition Act, and I have previously submitted testimony to the Aviation Subcommittee in detail on airline alliances which I would refer you to.

I would just like to close with a couple of quotes. The father of free market economics, Adam Smith, once observed, "People in the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public or in some contrivance to raise prices." More recently, on the front page of yesterday's *Wall Street Journal*, another authority was quoted, "Free markets do not exist in a state of nature. Free markets are things that have to be defined by custom and law."

Congress must not forget these fundamentals of free market competition. If they do, deregulation of airlines, as well as other industries, will quickly evolve into corporate cartels and monopolies far worse than the regulated industries they replaced.

I'd be glad to take any questions.

[The prepared statement of Mr. Hudson follows:]

PREPARED STATEMENT OF PAUL HUDSON, EXECUTIVE DIRECTOR, AVIATION CONSUMER ACTION PROJECT, WASHINGTON, DC

Good afternoon. My name is Paul Hudson and I am executive director of the Aviation Consumer Action Project which was founded by Ralph Nader in 1971. We seek to protect the rights and interests of the flying public in areas of safety, cost and convenience. Thank you for inviting me to testify today on what I believe is the most important economic issue in commercial aviation in this decade: The State of Competition in the Airline Industry.

In late 1997 it became clear to most independent industry observers that the airline industry had fully recovered from its financial problems of the early 1990s. Its operating costs were down, its capacity utilization was up, it was expanding overseas at a great rate, ticket prices were up about 18% in 1997 alone and profits were at record levels. But not all airlines were doing well. Upstart and low cost airlines with the exception of Southwest were losing money and going out of business. How could this be that in boom times in the U.S. and around the world in aviation that there was a net loss of airlines as more exited than entered the business? How could it be that competition was leading to much higher consumer prices, more crowded flights, and lower costs for the airlines?

The answer is the major airlines have now figured out how to beat the system of free market competition that Congress thought it enacted in the Airline Deregulation Act of 1978. In short, the major carriers have been very busy undermining free market competition, while the U.S. DOT and the Justice Departments have been distracted or asleep. How major airlines do this is complicated, but in essence it involves use of unfair competition that limits consumer access to low cost air transportation, refrains from vigorous price competition, engages in various forms of commercial bribery and coercion, limits consumer access to price information, and utilizes discriminatory pricing, and deceptive advertizing to the maximum. Most of the methods are legal, because Congress in its enthusiasm to decontrol the airlines and exempt them from federal, state and local economic regulation, left the other half of the job undone. Unlike most other industries, the airlines do not have many rules of fair competition.

So for example, the major airlines can control consumer access by locking up most of the gates at major airports with long term leases and financial arrangements that give them veto power over airport expansion or even the use of other competing airports and new airport construction. Major U.S. airports are the choke points through which most of the nations air traffic must pass, as well as much of the world's. Other methods include bait and switch advertizing of low cost air travel with little or no supply (airlines are exempt from state and local deceptive advertizing laws), making regional airlines "offers" to become "partners" (vassals) with major carriers or be put out of business. Code sharing allows one airline to sell transportation on another "partner" airline as its own, and no law requires disclosure or limits special deals between airlines that should be vigorous Competitors rather than Cooperators.

Now the six major airlines that control about 80% of all the seats in the U.S. have announced that they will form three alliances by this summer. According to airline industry witnesses at a hearing before the House Aviation Subcommittee on April 30th, 1998, this will effectively lead to only four major carriers (United-Delta, American-US Airways, Northwest-Continental and Southwest), not just in the U.S. but in the world. Accordingly, a competition *problem* in the airline industry has now become a competition *emergency* requiring immediate action. Without Congressional action in this session, we believe that the major alliances will be a done deal by this fall and the era of airline competition will have ended, replaced by three or four global corporate cartels.

Accordingly, we recommend that the Congress (1) enact a 6 to 12 month moratorium on airline alliances, (2) draft and enact an Airline Competition and Consumer Protection Act of 1998 to establish rules of fair competition for the industry, and (3) enact a federal anti-price gouging law to cap air fares at 50 cents per passenger mile (five times the break even point). Now is the time for those members of Congress, especially those that strongly support airline competition and consumer protection, to stand up and defend both the free market and a basic level of consumer protection. With bi-partisan cooperation, the other half of the job left undone in 1978 can be successfully accomplished in 1998.

At the last two hearings I testified before the Aviation Subcommittee, industry witnesses urged that Congress do nothing claiming that any action would amount to re- regulation of the airlines. I would submit that the opposite is true, doing nothing will permit the industry to curtail competition all on its own, totally contrary to the result envisioned by Congress when it deregulated the airlines 20 years ago. While the free market often has few friends, it has been the engine that has brought lower air fares and better service to most of the U.S. and the world. However, the free market is quickly breaking down and need new laws are needed to enforce fair competition.

ACAP recommends that strategy and policy goals guiding an Airline Competition and Consumer Protection Act should include the following elements:

1) Free access of all airlines to code sharing benefits (similar to the access rules in the telephone and electric utility industries).
2) Increasing airline and airport capacity by 4% to 6% per year to keep up with growth in air travel, to prevent overcrowding and higher air fares.
3) Fair access to gates at major airports by all airlines.
4) Encouragement of greater use of secondary airports and military surplus airports.
5) Use of larger aircraft to increase capacity on heavily traveled routes.
6) Encouragement of high speed rail and other faster dedicated means of transporting passengers quickly between airports in the same region as well as to and from downtown business centers and major airports.
7) Encouragement of point to point or in-line air travel as the major alternative to hub and spoke systems used by most major airlines.
8) Installation of a new air traffic control system within 3–5 years.
9) Granting consumers the same protections they receive in other industries.

No less an authority than Adam Smith, the father of modern capitalism and free market economics, observed: "People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public or in some contrivance to raise prices." Most recently, as reported on the front page of yesterday's *Wall Street Journal*, Ron Chernow, author of the acclaimed and most revealing biography of John D. Rockefeller Sr., *Titan*, noted: "Free markets do not exist in a state of nature. Free markets are things that have to be defined by custom and law." The Congress must not forget these fundamentals of free market competition. If they do, the deregulation of airlines as well as other industries will quickly evolve into corporate cartels and monopolies far worse than the regulated industries they replaced. That in turn will quickly lead to higher prices and inflation, following by higher interest rates, reduced competitiveness and productivity for U.S. business, and an end to the current economic boom.

Paul Hudson has provided additional recent testimony before the House Aviation Subcommittee on the issues of Airline Alliances and Airline Competition, April 30, 1998; The Authorization of FAA and Airport Improvement Program in Light of Recommendation of the National Civil Aviation Review Commission, March 25, 1998.

ORGANIZATIONAL DESCRIPTION AND INTEREST STATEMENT

The Aviation Consumer Action Project (ACAP) Group is an independent not-for-profit corporation founded by Ralph Nader in 1971. It receives no federal government grants and has no contracts with any federal government agency, air carriers, airport authorities, or aircraft manufactures.

Paul Hudson, executive director, has been a member since 1991 of the FAA's Advisory Committee on Rulemaking (representing Public Citizen from 1991–1997), a 400 member committee with many working groups advising the FAA on all aviation safety matters. Presently, he is the only public interest member of that groups Executive Committee and has been a member of the Emergency Evacuation Working Group since 1992. He also serves on the FAA's Aviation Security Advisory Committee and chairs its Working Group on Public Education.

Mr. Hudson was president of the Families of Pan Am 103/Lockerbie from 1989 to 1992. From 1977 to 1987 he was general counsel to the NYS Crime Victims Board. He has practiced law in Albany, New York and New York City, is listed in *Who's Who in American Law*, and has been a consultant to and a longstanding member of the Victims Committee of the American Bar Association. He is a graduate of the University of Michigan (B.S.) and Cleveland Marshall College of Law (J.D.)

Mr. HYDE. I thank you very much, Mr. Hudson, and parenthetically—and I don't mean to be disruptive of this meeting because this has nothing to do with airlines—but I couldn't help thinking as I heard the word "competition" used with such reverence, why competition isn't good in education, in grammar schools, in high schools? My, God, there's a disconnect there—a terrible disconnect. Competition is wonderful in the airline industry. It ought to be good in elementary schools, too. But that's heresy, and that's another subject for another day.

We now come to Mr. Karaganis, who is not only a nice guy and a brilliant lawyer, but has infinite patience. And so, Mr. Karaganis.

STATEMENT OF JOE KARAGANIS, PARTNER, KARAGANIS AND WHITE, CHICAGO, IL

Mr. KARAGANIS. Mr. Chairman, thank you, Ranking Member Conyers, members of the committee. I listened with interest. I have great respect for the Justice Department and for the Department of Transportation. I served as a Government lawyer in one capacity or another for about 25 years of a 30-year practice. But I couldn't help but be shocked when I heard praises like, "the state of competition in the airline industry is quite good. That deregulation is a success story."

Again, for my purposes, in light of current media events, that's kind of like the captain of the Titanic saying, "We've got a small leak, but otherwise the cruise is going quite well." I suggest to you that the story is quite different than was portrayed by the Department of Transportation and the Justice Department. What you're seeing, in terms of the terminology of alliance cartels, is really the latest step in a 20-year progression of monopolization in this industry since so-called deregulation. And I want to put a couple of things to rest. We're not talking about practices at the cusp of the 21st century. We're talking about practices that were pulled straight out of a textbook that Judge Cooley—for whom the Cooley Law School in Lansing is named, who was the first chairman of the Interstate Commerce Commission, could have written as to predatory practices and monopolistic practices of the railroad industry which I used to represent. They were bad practices then; they are bad practices today. And they are bad practices whichever industry pursues them.

Now let me suggest to you that the cartel problem in this industry is already in existence. There are a number of factors that they have used to carve up markets. And we have a number of recommendations for the Judiciary Committee to consider.

What we also want to emphasis to this committee and the Congress, itself, is that the impact of these practices go well beyond the problem of high prices for the business community. We are concerned about that. Most of our mayors are business people. We are concerned about the impact on the economy.

But our concern goes to a number of other areas as well—loss of critical air service, reduced margins of safety, toxic air pollution problems, and some really—I can think of no other word—despicable practices with respect to trying to pit region against region and community against community in an attempt to pursue the monopolies.

I'm not going to go into a lot of detail on these. I would suggest to the committee, and I brought copies here of the report by Congressman Hyde and Congressman Jackson which makes O'Hare and the Chicago marketplace a case study, that I think is particularly illustrative of these problems and how they affect the region.

I would also direct the committee's attention, respectfully, to the testimony given by Congressman Jackson and Congressman Hyde before the Aviation Committee of the House, Transportation, and Infrastructure Committee. Congressman Jackson pointed out something very severe that, when we talk about O'Hare and we talk about the problems of the Chicago region, it's as if, "well, those are just Illinoisans talking about it."

Congressman Jackson put together some graphs that I hope the committee has time to study. These are charts of the markets that are losing access to the Chicago marketplace. The small towns and the small business centers either have lost or will lose access to the Chicago market. And this isn't a function of, again, I would say this—the previous witness made reference to a study of 19th century economics.

Mr. Chenow has just published a book on John D. Rockfeller. John D. Rockfeller was an imminently rational man. He carved up markets. The airlines are doing the same thing. It's not done out of any perverse evil; it's done because it's rational for them to do so, to maximize the profits. Unfortunately, what's rational for them is not good for us. And what's happened here, is that because they are being rational and rationing capacity which is exhausted, they're putting in flights to Tokyo and taking out flights from Lansing and Traverse City. And that's the kind of problem we've got. If you want to access markets, you've got to have capacity. The gentleman from the airline that would like to get access illustrated this point.

We talk about reduced margins of safety, and the next time any members of this committee or the audience wants to fly into O'Hare, ask the captain after you land, whether you've gone into O'Hare under what's called a LAHSO procedure. It's called a "land and hold short." In May of last year at O'Hare, because of the constant need to push more planes into O'Hare without building new competitive capacity, we almost had another Tennerife, and I won't go into—those of you who may remember the tragedy in the Azores with two 747s. Oh, we were going to be a bit smaller. We almost lost a Boeing 747 and a United 737. Why? Because we are running intersecting runaway operations pedal to the metal at O'Hare because we don't have capacity elsewhere in the Chicago marketplace.

Now we've got a number of recommendations, and I would ask the committee—Congressman Hyde is well familiar with this—we cannot get law enforcement. Congressman Hyde is concerned about law enforcement. I'm a former law enforcement official; I'm concerned about law enforcement. We can't get the Federal Government to exercise law enforcement responsibilities to protect public health and safety around airports. We've got some of the worst air pollution problems around O'Hare in the Nation, and U.S. EPA looks the other way. That's the infamous letter that Congressman Hyde alludes to of October 1st, 1997, which 7 months later has not been answered. These are questions we've been asking for years and not getting answers.

What are our recommendations about these problems? Number one, Congress should impose a legislative moratorium on all domestic alliance cartels while Congress develops a comprehensive solution to the problem of monopolization of the airline industry. You're not going to come up with the answers you need; you're not even going to come up with the questions you have to ask in the short space of an oversight meeting or a short-term process. Put a moratorium in place while you can engage in a thorough study of this.

And I want to emphasize this point: I keep hearing this, "Let's not go back to deregulation." The airline industry today is one of the most heavily subsidized, financially regulated industries in the country. This Government is a partner in many of the very monopolistic practices which many people on this panel are talking to, through the financial subsidy practices and the airport regulation practices in this country.

So, again, to suggest that, "Gee, let's not go back to the bad old days of regulation," the existing monopoly problems existing in the industry today are fostered by Government regulatory and subsidy policies in place today, and Government looking the other way in addressing these problems.

Second, Congress should conduct what I call a "first principles" approach or examination of the industries and the national goals for the industry. This is something that is going to take some time. This is not the time or place to get into the details of it.

Third, the markets we're talking about here are the markets in the major urban business centers in this country. And Congress is going to have to decide what it wants with respect to access to those markets, so that we can bring in the Traverse Cities, and the Lansings, and the Des Moines, and these other communities, and get them access to our major business market.

So Congress is going to have to set the goals. What do we want? And those goals are very simple. Do we stuff it all into Logan? Do we stuff in all into O'Hare? Or do we build environmentally-sound new capacity? And that's something that's very important.

Congress is also going to have to understand something else. Everybody in the press talks about this as if its a Federal problem with only Federal solutions. Airports in this country are built and operated under State law authority. Unless Congress addresses this in an environmentally responsible manner, the States are going to rebel.

We're rebelling in Illinois right now. We are not going to have major new capacity forced down our throat at O'Hare. We've been talking about new capacity. We want new capacity, but we want it in an environmentally sound new airport. We talk in our paper about a number of strategies for new airport capacity. I won't bore you with it at this point.

Next point, Congress should avoid band-aid strategies. The idea of throwing in a few more slots at O'Hare and calling it bringing in new competition is ridiculous, is a joke. Bringing one flight a day in from Reno Air from Reno, Nevada, does not make major competition for United and American. And anybody who thinks otherwise is dreaming. Congress should avoid band-aid measures such as what we called the incremental slot creep. Where the airlines stand in the way of new construction, as they have done across the Nation—and if you think this problem is isolated to Illinois, take a look at the second section of the Wall Street Journal today, when Continental Airline has now brought in longer service out of Love Field, and listen to American Airlines scream about it, and suing the City of Dallas for trying to allow new competition to come in. Where the airlines stand in the way of new construction and new capacity, Congress should compel these airlines to give up their Government-owned slots of capacity constrained airports. If we can't get new capacity and new competition by building new facilities, we ought to divvy up the existing facilities in a much more rational and fair way.

Congress should prohibit the tie-in arrangements the airlines use to lock in passengers. I listened egregiously to hear about these Frequent Flier programs as if they're some sort of innocuous meaningless thing that, "Gee, the consumer loves." One of our recommendations is, get rid of—not the Frequent Flier program—get rid of the tie-in to the airlines. I currently use a credit card that lets me fly my Frequent Flier miles on any airline in the country. I'm not tied to United; I'm not tied to American; I'm not tied to anybody. There are a number of these programs available now. Get the Frequent Flier programs away from the airlines and away from the tie-in.

Mr. CONYERS. Can I get the name of that card, please? [Laughter.]

Mr. KARAGANIS. Yes, sir.

If you want it, I'll give it to you after the committee hearing. I don't want to give an unnecessary plug to some bank. [Laughter.]

But a number of banks do it, Mr. Conyers. [Laughter.]

Congress should prohibit tie-in arrangements, not only Frequent Fliers. Congress ought to go back and reexamine—you know, I listened to Department of Transportation, I listened to the airlines. They have looked at the code-sharing arrangements with the regional commuters. We have United Express, American Eagle, Delta Connection as if it's a fait accompli, as if there's no problem with it. The fact is it's been used to lock up markets. And this committee ought to go back and reexamine that phenomenon. When we talk about a "first principles" analysis of this, we ought to go back to the start and see what's right and what's wrong with the industry.

Next, Congress should examine and implement further incentives to encourage competition and disincentives to discourage monopoly. Where you're doing something wrong, you ought to be punished, you ought to feel the pain. Where you're doing something right, if it's a new entrant or otherwise, we ought not to shy away from appropriate subsidization where necessary to bring in new competition. We've done it throughout the history of this country. There's nothing wrong with it. We do it for the majors today.

And finally, Congress should not wait for or look to the executive branch to solve the problem. This committee said the question very well. How is the Justice Department going to address the issues on its plate today, let alone the problems of the airline industry? Most of the members of this committee are lawyers; I'm a lawyer. I can imagine that every firm over 300 lawyers in this country is salivating at the thought——[Laughter.]

Mr. KARAGANIS [continuing]. Of resuscitating its antitrust departments which has moribund for the last 15 years. It's going to be a great revenue thing, but I can tell you as someone who—my slow cases in my field run 10 years, and we're considered pikers compared to the antitrust barr.

Mr. HYDE. Mr. Karaganis, because you were the last, I let you go a lot.

Mr. KARAGANIS. Thank you. I'm sorry.

Mr. HYDE. That's all right. I don't want anyone to think it had the slightest thing to do with my friendship for you. [Laughter.] But——

Mr. KARAGANIS. Thank you.

[The prepared statement of Mr. Karaganis follows:]

PREPARED STATEMENT OF JOE KARAGANIS, PARTNER, KARAGANIS AND WHITE, CHICAGO, IL

> CARTEL: a voluntary . . . combination of independent private enterprises supplying like commodities or services that agree to limit their competitive activities (as by allocating customers or markets, regulating quantity or quality of output, pooling returns or profits, fixing prices or terms of sale, exchanging techniques, trademarks, or patents, or by other methods of controlling production, price or distribution)
>
> Webster's Third New International Dictionary (1970)

> "The cable [replace with airline] companies decided to switch rather than fight, to merge rather than compete. That's bad for competition and bad for the American consumer"
>
> Mr. Joel Klein
> Chief of the Antitrust Division
> United States Department of Justice
> *Chicago Tribune*, Wednesday May 13, 1998

Mr. Chairman, Ranking Member Conyers, members of the Judiciary Committee. Thank you for the opportunity to present the views of the Suburban O'Hare Commission—a consortium of local governments surrounding O'Hare Airport in Chicago—on issues of competition in the airline industry. Today's hearing is an oversight hearing conducted in the media glare of recent proposals by the major airlines to create domestic cartels—euphemistically called "alliances."

But I respectfully suggest to this Committee that these proposals for alliance-cartels are nothing more than the latest manifestation of an incremental process of destructive monopolization that has characterized the airline industry over the last 20 years. Though only now formally announcing these alliance-cartels, the major airlines have for some time engaged in a *de facto* cartel that has carved out specific geographic and economic markets and has agreed to refrain from entering into significant competition in each other's markets. The clear purpose of this *de facto* cartel has been to maximize monopoly profits—and minimize competitive pressure to reduce monopoly fares—through a system of Fortress Hubs where the major airlines exercise *de facto* agreed-upon dominance.

This *de facto* cartel of airline monopolization has many and varied adverse effects on our nation and our communities:

- outrageous monopoly fare penalties charged to American business travelers;
- loss of critical air service between major commercial centers like Chicago and secondary business centers in smaller communities and throughout rural America;
- serious compromises on the safety of air travelers as more and more aircraft are jammed into overloaded airports;
- disregard by responsible federal agencies of toxic air pollution problems around airports several hundred times worse than is allowed at federal toxic dump superfund sites; and
- less than subtle appeals to economic and social discrimination as the major airlines have aggressively fought to defeat attempts to bring in new competition to break the current monopoly stronghold enjoyed by the major airlines over much of the nation's air transportation system.

I. Our experience with the consequences of monopoly power at Fortress O'Hare.

For the last 20 years, the communities of the Suburban O'Hare Commission have been interested spectators and frustrated victims of this monopolization process in one of the largest air transportation markets in the Nation—metropolitan Chicago. Our experiences in metropolitan Chicago (especially at O'Hare) will hopefully give this Committee and the Congress some insight into the extent and severity of the monopolization problem and its adverse impacts on our communities and the Nation.

We provide this case study experience with the airlines that dominate the largest Fortress Hub airport in the Nation with a specific purpose. This Committee and Congress must realize that the decisions made by the airlines to increase their monopoly power and to prevent entry of new competition—and the decisions by Congress to either correct or ignore these problems regarding competition in the airline industry—have far reaching consequences on many aspects of our economy, our public health, and our safety.

I am not going to burden the Committee with a detailed account of the problems created by the Fortress Hub dynasty United and American have created at O'Hare. These problems are discussed in detail in a bipartisan report prepared by Congressman Hyde and Congressman Jesse Jackson, Jr., entitled *Metropolitan Chicago's Airport Future: A Call For Regional Leadership*. Their report illustrates problems with monopoly practices by the airlines in metropolitan Chicago—and the airlines' desperate attempts to oppose construction of a new airport—that are reflected in different degrees in many areas of the nation. Further, I respectfully direct the Committee's attention to the April 30, 1998 Statement of Congressman Hyde before the Subcommittee on Aviation of the House Committee on Transportation and Infrastructure (Hearing on Airline Competition) and the April 23, 1998 testimony of Congressman Jackson to that same Committee.

But as one who has lived through and experienced these problems first hand for the last 15 years, let me give you a personal summary of some of these problems. All of these problems in the Chicago air transport market can be traced, at their core, to the desire of the dominant airlines at Fortress O'Hare to lock in and expand their monopoly and to keep out significant new competition.

High Monopoly Driven Fares. Business travel to and from O'Hare has become an economic nightmare. Unrestricted next day business fares—the lifeblood of the time sensitive business traveler—from Chicago to markets like Washington, New York, Denver, Seattle, and Los Angeles have become prohibitively expensive. For business travelers from those cities who wish to visit our Chicago metropolitan area, the high fare experience is equally painful.

Business travelers have responded in several ways. Some have tried to beat the system, using the two ticket special fare approach which allows the business traveler to use two tourist travel bargain tickets at a combined price cheaper than the single unrestricted business fare. The airlines say that this tactic is illegal and threaten sanctions on anyone who uses this tactic.

Major corporations are reported to be making side deals with the airlines. In deals reminiscent of the rebates and kickbacks of the old railroad robber baron days, some large corporations are reported to be getting discounted fares substantially less than charged the average medium to small business traveler who doesn't have a special deal.

Others are just biting the bullet and paying the penalty created by the Fortress Hub dominance enjoyed by United and American. The Department of Transportation and the GAO have all concluded that because of the Fortress Hub dominance at O'Hare by United and American—with virtually no opportunity for the entry of significant new competition—Chicago area travelers are paying a significant monopoly fare penalty. The Illinois Department of Transportation concludes that this monopoly penalty for Chicago area travelers ranges from 250–300 million dollars per year.

Loss of Critical Air Service Between the Chicago Market and Small Business Centers and Rural Areas. The key to this fight centers on capacity. O'Hare does not have the capacity to accommodate both traffic growth—especially high yield traffic growth to international markets and major domestic business markets—and traffic service to and from many smaller business centers and rural areas. The result is that United and American have dropped or reduced service to many smaller business centers and rural areas and will likely drop more of these destinations in coming years. Congressman Jackson's April 23rd testimony vividly illustrates this problem and lists dozens of cities which have or will lose service to and from O'Hare throughout the Midwest (Illinois, Wisconsin, Michigan, Iowa and Wisconsin), in the states of New York (Albany, Newburgh, Syracuse), South Carolina (Charleston, Columbia), Ohio (Akron, Dayton) and other states (Bangor, Maine, Fargo, North Dakota, Huntsville, Alabama, Houston, Texas, Roanoke, Virginia, Boise, Idaho, Burlington, Vermont, Charleston, West Virginia, Harrisburg, Pennsylvania, Rochester, Minnesota, and Wichita, Kansas. The key to this loss of service is lack of new airport capacity in the Chicago region and the aggressive campaign by United and American opposing construction of a new airport.

Serious Compromises with Air Safety. One of the problems documented by Congressmen Hyde and Jackson is that the FAA—rather than aggressively supporting new airport construction—actually has worked to impede construction of the new airport and instead, continues to try to jam more and more aircraft into an already overstressed O'Hare. Congressmen Hyde and Jackson, along with a host of other political leaders as well as former airline pilots, have pointed out the potential for catastrophe in trying to jam more and more aircraft operations into O'Hare.

Instead of building a new airport to take the growth—an airport designed to 21st century safety standards—the FAA continues to employ shortcuts to squeeze more planes into O'Hare, an airport built over 40 years ago. Illustrating this willingness to push the envelope on safety is the FAA's use of "Land and Hold Short" (LAHSO) procedures at O'Hare. Because O'Hare (designed over 40 years ago) is made up of intersecting runways, the FAA gets more planes into the airport with a "land and hold short" procedure which requires a plane coming into the airport to land and stop short on the arrival runway prior to reaching the intersection with a departure runway. Under these procedures, another aircraft is often simultaneously using the departure runway.

If everything works right, the arriving plane stops short of the intersection and the departing plane goes through the intersection without incident. But Murphy's law teaches tragic and painful lessons in air safety. Everything does not always work right. Consider the following two incidents:

In May of 1997, a British Airways 747 bound for London was instructed to takeoff on O'Hare's Runway 14R to the Southeast. Runway 14R intersects with an East-West Runway 27L. At the same time the British Airways 747 was gunning full throttle departing on 14R, a United 737 was landing on Runway 27L with instructions to "land and hold short" of the intersection with Runway 14R. The United 737 landed in the appropriate touchdown zone but the United aircraft was unable to stop and went through the intersection. Only by sheer luck and because the incident occurred in daylight, a tower controller saw the impending intersection collision and ordered the 747 to make a panic stop blowing out several tires.

A similar incident was reported in October 1997 when two aircraft were both landing on intersecting runways. One aircraft was landing to the northwest on Runway 32L and a second aircraft was landing on the intersecting runway 27L. The pilot of the aircraft landing on 32L reported his concern that the aircraft landing on 27L might not be able to land and hold short of the intersection. In his report the pilot stated: "I'm now a firm believer in the union pos[ition] that LAHSO ops are inherently unsafe."

Instead of working to build a new metro Chicago airport to take the traffic increases, the FAA and Chicago are encouraging the increased use of LAHSO procedures—including the use of LAHSO with "wet stops" and proposed use of LAHSO at night when the tower controllers cannot see the relative positions of the planes and the intersecting runways. The next time you land at O'Hare, ask your pilot if you landed in a LAHSO relationship with an intersecting aircraft.

What's the answer to stretching the safety margin at O'Hare by stuffing in more and more planes? A new airport. Here is another example where airline attempts to preserve their monopoly pricing power by opposing new airport construction has impacts far beyond mere price gouging.

Toxic Air Pollution. The EPA and FAA have identified a host of toxic emissions from jet aircraft—including Benzene and Formaldehyde. Under normal dispersion conditions, there appears to be little evidence that the exhaust from a single jet aircraft creates ambient levels of these toxic pollutants at concentrations above concentrations considered acceptable for public health protection. But when two thousand or more operations are jammed into O'Hare on a single day, there is often a buildup of these toxic emissions which then move into the surrounding residential communities.

The Illinois EPA acknowledges that O'Hare's massive level of operations make it one of the largest—if not the largest—emitter of toxic pollutants in the State of Illinois. Test data taken at the border between Midway Airport and its residential neighbors (a much smaller airport with much smaller emissions volume) indicates that concentrations of toxic air pollutants moving into the residential neighborhood around Midway are several hundred times that allowed by federal EPA from Superfund toxic dump sites. The available evidence suggests that the concentrations of these toxic substances in O'Hare communities is far higher.

Yet no federal agency, despite the repeated requests of Congressman Hyde and other officials, has seen fit to measure the actual amounts of these toxic pollutants entering our residential neighborhoods or to perform a public health assessment as to whether the concentrations of these toxic materials from O'Hare operations exceed acceptable public health limits. Nor have any of these agencies taken any corrective action to reduce the amount of these toxic emissions to acceptable levels.

The significance of this deliberate disregard of toxic emissions and related public health impacts from aircraft operations is great. If Congress's choice for the next decades of the 21st century is to follow the path of the monopoly airlines and stuff more and more aircraft into monopoly dominated hubs—older airports with no environmental buffer to disperse the buildup of toxic emissions—the adverse consequences for the public health of thousands upon thousands of families living adjacent to those airports will be devastating. If on the other hand Congress works to break the progressive monopolization of the industry by encouraging the building of environmentally buffered new airport capacity to allow new competition to enter markets like Chicago, Congress has addressed both the economic problem and the public health consequences of monopoly power.

Appeals to Economic and Social Discrimination. The desire for monopoly power and the drive to prevent new competition from entering the market through a new regional airport has important impacts on the issues of economic and social discrimination. Several studies have shown that by accommodating traffic growth in the Chicago market with a new airport, the metro region will gain several hundred thousand jobs and billions of dollars in annual economic benefits.

Because physical dynamics dictate that the new airport be located in the south suburban region of the Chicago metropolitan area, it is clear that many thousands of these new jobs would go to people living in this area—an area afflicted with severe problems of economic hardship. It has long been recognized in Chicago that the south side and south suburbs have been given a less than equal share of regional economic development.

It is in part to address these economic inequities that Congressmen Jackson and Hyde have formed their bipartisan Partnership For Metropolitan Chicago's Airport Future. Their partnership brings the region critically needed environmentally sound new airport capacity; gives new airline competitive entrants access to the Chicago market; addresses and abates major public health, environmental and safety questions that render O'Hare expansion unacceptable—all the while providing an enormously uplifting economic stimulus to an area under economic siege. As they have described it, it is a WIN/WIN scenario for the region.

But it is not viewed as a WIN/WIN by the airline industry who wants to create cartels rather than compete in each other's markets. The dominant airlines at O'Hare have waged a less than subtle campaign to pit the northern and western portions of the region against the south and southwest portions of the region in their fight to defeat political support for a new airport and its threat of new competition to their Fortress Hub. Massive four-color glossy mailings have been sent by the airlines to thousands of households in O'Hare area communities stating ominously that a new airport will kill O'Hare.

In stirring up economic fear and resentment toward a new airport, airport representatives have emphasized that "those people"—i.e., the people in the south and southwest portions of the region—are not the kind of people that have "AAdvantage" credit cards and buy airline tickets, and that, therefore, their needs need not be addressed. So it is not only the well-to-do business traveler who is suffering from the financial penalties imposed by airline monopoly power in the Chicago market. The airlines will pull out all the stops—even appeals to baser instincts for social discrimination—to preserve and enhance their monopoly.

II. Suggestions for tackling the problem of airline monopolization.

Our first respectful suggestion to this Committee, and to Congress as a whole, is that your focus not begin and end with the current proposals for alliance-cartels. Congress needs to examine the problem of airline monopolization and their potential solutions in a detailed and thorough manner, and then needs to fashion and pass comprehensive legislation that will effectively address and remedy each key element of the problem. Piecemeal, Band-Aid solutions will only make matters worse.

But in order to give Congress the time to conduct such a thorough examination, Congress must protect the status quo. Allowing the current airline rush toward these formalized alliance-cartels to continue to become entrenched while the Congress deliberates will not only make the monopoly problem worse; it will make any remedy ultimately fashioned by Congress much more difficult to implement. In light of these considerations, the following represent the Suburban O'Hare Commission's recommendations for consideration by this Committee and the Congress:

1. A legislative moratorium on all domestic alliance-cartels.

We ask Congress to pass an immediate legislative moratorium on all forms of airline domestic alliances until Congress can investigate and fashion comprehensive remedial legislation to address all aspects of the airline monopolization problem. Given the scope of the problem, we suggest a minimum moratorium of at least one year.

2. A "First Principles" examination of all aspects of the airline industry and our national goals for that industry.

It is a common mantra of those supporting the current slide toward increased monopolization to charge that all attempts to solve the problem represent a return to the "loathsome" days before "deregulation." But few can argue that the airline industry today is the beneficiary of a massive amount of *current* government intervention that has heavily subsidized the industry and that this government intervention has actually assisted the airlines in expanding their monopoly positions. The airline industry is one of the most heavily subsidized private industries in the Nation and enjoys a current relationship with the federal government and its local government airport landlords that has accelerated and exacerbated the pace of monopolization.

We respectfully suggest that the Congress reexamine the basic premises and assumptions that underlie the current federal/state legal and financial structure relating to the airlines industry—including the assumptions and predictions underlying the 1978 deregulation legislation. While none of us want a return to the ills of a moribund federal bureaucracy, it goes without saying that the rosy 1978 predictions of a vast increase in competition have not come true. Indeed, just the opposite has occurred.

Congress needs to clearly define its objectives for the airline industry and the communities and consumers served by that industry. Further, Congress must be willing to acknowledge its own past errors in addressing these objectives, and must be willing to fashion new remedies to achieve these objectives. It is in light of this recommendation for a thorough "first principles" examination of the airline industry and the Congress's goals for the communities and consumers served by that industry that we offer the following observations and suggestions for your consideration.

3. The need to determine demand and capacity objectives and implement solutions to achieve these objectives.

Much of the ability of several of the major airlines to dominate "Fortress Hubs" has been their control over existing capacity in a given metropolitan market and their ability to prevent new capacity from being built that would bring in new competition. By locking up existing capacity and preventing the construction of new competitive capacity, the existing majors have guaranteed their ability to maintain high monopoly based fares and to charge the nation's business travelers exorbitant monopoly based premiums. This strategy can explain much of the failure in this nation to build—with the exception of Denver—any new major airports in the last 20 years.

A secondary impact of this deliberate industry capacity-constraint/ anti-competition strategy is the problem of loss of service to smaller markets in secondary business centers and rural communities. As major airlines at capacity constrained major hubs seek to maximize revenue yield, they often bump service to smaller communities in order to accommodate new service to more revenue rich routes. Alternatively, rather than totally abandon service, the airlines often charge exorbitant premiums (on a cost per mile basis) to small business centers and rural communities where they continue service.

Congress needs to ask and answer the following question: How much capacity does Congress want to see developed in the major business markets of the nation? How much new capacity needs to be built in these major markets 1) so that new demand for access to those markets can be met, 2) so that service to small business centers and rural communities to those markets can be preserved and expanded, and 3) so that sufficient new capacity is built to allow new competitors to freely enter the market and keep fares competitive.

Until Congress affirmatively addresses the capacity question in the nation's major business markets, the problems of airline monopolization—and the adverse effects of that monopolization—will continue.

4. Suggested solutions for new capacity.

Based on our hard experience in metropolitan Chicago—where the State of Illinois and most of our metro region supports the construction of new capacity at a new regional airport—we have the following suggestions for Congress's consideration.

A. Take the federal subsidies for new airports out of the hands of the very airlines fighting new capacity. The irony of much of the monopoly problem of limited capacity today is that Congress has inadvertently placed the bulk of the federal subsidies available to build new airport capacity in the hands of those who are fighting the construction of new capacity. Most of the federal subsidy money for new airport construction available today comes from one of two federal passenger taxes currently imposed by federal law. The available revenues from one of those taxes (which funds the Airport Improvement Program or "AIP") have reduced through budget control agreements and deficit reduction measures.

Congress placed the revenue from second tax (the PFC or Passenger Facility Charge) in the hands of the airport operators of the major airports. These airport operators in turn have long standing symbiotic relationships with their major airline tenants who are the ones who have created the hub dominance that allows monopoly fares. The last thing these hub dominant airlines want is the construction of a new airport which would allow significant new competition to enter their hub market and threaten their golden monopoly goose.

To our knowledge none of the airport operators in the major metropolitan markets have proposed using PFC revenues to build new airports. Instead, their proposals have been limited to expanding their existing airports where their long-standing relationships with their major tenants will allow those tenants to expand their monopoly position. Thus we see the specter of massive federal subsidies being used by the very airlines who operate out of the Fortress Hubs and their airport operator allies to expand their monopolies.

Indeed, the idiocy of the existing situation is vividly illustrated by our experience in Chicago. Passage of the federal PFC legislation was originally sought by the City of Chicago on a pledge of building a new regional airport. When Chicago's choice of a site was rejected, Chicago refused to use any of its federal PFC collections at O'Hare to help fund a new airport at a different site. Instead Chicago has been piling up the federal PFC revenues at O'Hare and now proposes to give United and American an 800 million dollar gift of these subsidies to remodel the existing terminals at O'Hare—expenses United and American would otherwise have to pay.

The ironic result. A huge windfall of federal welfare is given to two of the nation's richest airlines—corporate welfare at its worst. No new capacity is built; Chicago claims that the $800 million will not expand capacity at O'Hare. The proposed new airport which would bring in new competition is denied any significant federal assistance. And massive federal subsidies are manipulated to enhance the existing monopolistic Fortress Hub while defeating attempts to bring in new competition and lower fares with a new airport.

Congress should redirect control of the federal tax revenues needed to build new airports to the Secretary of Transportation with directions to prioritize distribution of those funds to those states and metropolitan areas that demonstrate a willingness to fast track construction of environmentally sound new airports.

B. Build environmentally friendly new capacity. Many communities—seeing the environmental and public health problems, and safety problems suffered by communities like ours around O'Hare and in similar communities around airports like LaGuardia, Newark, Washington National, Minneapolis, and Seattle—have aggressively fought new capacity construction out of fear that the same problems would be expanded and that the federal government would continue to ignore these problems.

Their concerns (and ours) are real and cannot continue to be ignored. Building new airport capacity requires a federal/local partnership. Unless this new capacity is environmentally friendly, legitimate local resistance will prevent its construction. Congress and the FAA need to realize that resistance to new airport construction—and increasing resistance to trying to jam more aircraft into existing airports—is due to well-founded community public health and environmental concerns. Congress and the FAA need to remember that unless there is a willing local sponsor—authorized under state law to build new capacity—there will be no new capacity. The federal government does not build airports and airport capacity; the states and their political subdivisions do.

What do we mean by environmentally friendly?

Environmental buffers. New airport capacity has to include large land buffers to shield residential areas from noise and air pollution—buffers that do not exist at most existing airports in the nation's business centers. Those airports (sited and built, for the most part, fifty years ago) have long been stuffed with air traffic far beyond their original expectations. New airports should have significant land buffers devoted to agricultural or natural use to maximize land preservation.

High Speed Rail. Where feasible, high speed rail links between the central city and various airports in the region should be used to facilitate movement between the urban center and the airports to minimize vehicle congestion. Congress should consider pairing high speed rail service with new airport development linking major urban centers with new airports.

Environmental and public health regulatory control at the federal level should be placed in the hands of the USEPA. When it comes to environmental and public health protection of surrounding communities from the impacts of air traffic, the FAA gets a massive community vote of no confidence. FAA is correctly viewed as a booster and defender of the airlines; not a protector of community health and environment.

Nowhere is this problem worse than at O'Hare. At O'Hare the emissions of toxic fumes such as Benzene and Formaldehyde from over 900,000 annual operations—coupled with little or no environmental buffer to disperse these toxic pollutants—results in massive quantities of these air toxics drifting into surrounding residential communities. Based on measurements taken by USEPA at the border of Midway Airport, we know that these air toxics can exceed several hundred times the acceptable public health levels allowed in residential areas adjacent to federal superfund toxic dump sites. Yet FAA ignores the problem.

EPA should be directed by Congress to address the problem of concentrated air toxics from major airport operations and to take corrective action to bring toxic emissions into surrounding residential communities from major airport operations down to health protective levels.

Congress should acknowledge the power of states to regulate the adverse environmental impacts of airports. There has been much debate over the issue of preemption by Congress of the states' power to regulate the environmental impacts of aircraft noise. That Congress has the power to preempt such regulation appears unquestioned. But Congress does not have the power to order states and their political subdivisions to build new airports. Unless Congress recognizes the right of the states to regulate the adverse environmental effects of their own creations (i.e., airport capacity), there will be an increasing refusal by the states to engage in construction of new airport capacity or to allow their political subdivisions to do the same.

5. Don't use Band-Aid measures.

Some have suggested that the answer to lack of competition—and the related problems of high fares and reductions in service to rural communities—is to modify the "slot" or High Density Rule (HDR) now governing access to certain capacity constrained airports like O'Hare and LaGuardia. There are several problems with this approach.

First, there is not enough available incremental capacity at airports like O'Hare—already jammed to the breaking point—to make a significant dent in the existing problems of lack of competition in travel to major markets. Giving a relatively small number of new slots to airlines like Reno Air or America West at O'Hare does virtually nothing to bring insignificant new competition for United and American on their major routes to major business centers.

Second, while such slot "creep" may provide limited access to a few locked out communities that have a powerful senator or representative who can influence DOT decisionmaking, the limited number of additional slots available insures that many small business centers and rural communities will continue to get squeezed out of these hub airport markets. Instead of fixing the problem—providing major new capacity so that all can get access—the slot creep approach makes congressional dogfighting inevitable as Congressmen fight to have their favorite community jammed into a limited number of slots.

Third, slot "creep" provides incentives for the majors at such airports to buy out the new slots whenever the new recipients suffer financial distress. This is the exact process followed by the majors at slot controlled airports in incrementally buying their way into their current dominant position.

Fourth, slot "creep" stresses already fragile safety margins at O'Hare and similar airports. The only way to put more aircraft into a finite amount of space and time is to jam the aircraft closer together. While that system may work in optimum conditions, jamming more and more aircraft into the capacity constrained airport without a major expansion of capacity threatens a catastrophe.

Finally, a major expansion of capacity at airports like O'Hare would represent an environmental, public health, safety and political disaster. Our toxic air pollution levels now—at 900,000 annual operations—are already several hundred times acceptable levels. Jamming in several hundred thousand additional flights into an expanded O'Hare will only exacerbate the problem.

Our communities already find the noise of 900,000 existing flights—most of which are the so-called "Stage 3" aircraft—to be intolerable. Neither they, nor the Illinois politicians who seek reelection with their vote, will stand still for adding several hundred thousand additional flights at O'Hare.

At 900,000 annual flights, our O'Hare communities live in the specter of the terrible 1978 American Airlines DC–10 crash that killed hundreds when the plane crashed into a field adjacent to O'Hare. Continuing to push hundreds of thousands of additional flights into that limited airspace over densely populated residential areas is playing Russian Roulette—not only with the lives of air travelers, but with the lives of the residents of our communities.

6. Where the major airlines stand in the way of new construction of new capacity, compel these airlines to give up their government owned slots at capacity constrained airports.

There have been suggestions by some that—where there is major airlines hub dominance at a capacity constrained airport like O'Hare or LaGuardia—the federal government require the major airlines to give up their existing slots to new airlines willing to enter into competition at that airport. It is rightfully said that the capacity allocations (slots) are in reality government assets and that government assets should be used to promote competition by allowing new competitive entry—not to promote monopoly by letting one or two major airlines hog the market.

Unfortunately, this suggestion suffers from some of the same flaws that are involved in the incremental slot expansion proposals discussed above. Such slot redistribution—while providing more competition within the existing limited capacity—doesn't address the central problem of the need for new capacity. Without new capacity many small business centers and rural areas will still be squeezed out of major metropolitan business markets.

However, the suggestion does have some merit in the face of repeated aggressive attacks by the major airlines and their trade association, the Air Transport Association (ATA), against new airport construction. Where an airline that is the beneficiary of a government asset (a slot) actively works to protect a monopoly position by opposing construction of a new airport which would allow new competition to enter the market, it is fair and just that the government take away some of those exiting slots. Unless the airlines who are fighting new airport development in capacity constrained areas reverse their course and work cooperatively with the states and the federal government to promote new airport construction, transfer of their slots would be a just and effective sanction for their continued monopolistic conduct.

7. Prohibit the tie in arrangements that the airlines use to lock in passengers: domestic tie-ins with regional commuters; frequent flyer programs.

In the last 20 years the major airlines have used a variety of devices to lock in their passengers and to limit access by these airlines' competition to this passenger travel demand. These devices have included the hub and spoke system itself, the use of regional "alliances" with commuter airlines who share marketing and destination identity with the major airline partner (e.g. United Express, American Eagle), and the use of frequent flyer miles. Each of these devices creates pressure or inducement for the consumer to return to use that carrier and pressure not to use a competing carrier.

The new proposed national "alliances" (cartels) by United/Delta, American/USAir, and Continental/Northwest are simply progressive extensions of the same monopolistic trend of the last 20 years. Rather than compete in each others markets—(e.g.

Delta in the Chicago market, United in the Atlanta market) they are proposing to carve up these two markets by agreement and route each airline's passengers into the other airline's respective allocated market.

We have already recommended that Congress impose a moratorium on the alliance-cartels pending a comprehensive investigation of the entire federal role in civil air transportation and the passage of comprehensive federal legislation to remedy the monopolistic problems of the airline industry. As part of that investigation and analysis Congress should consider prohibiting two of the major practices that have exacerbated the monopoly problem.

First, Congress should mandate that all future travel mileage awards be usable on any airline. This change would break the link between a given airline and its mileage award programs which creates a discriminatory pressure against a customer switching to a competitor. Such universal mileage award programs are in use today by some credit card companies and the transition to such a program would be relatively easy.

Second, Congress should mandate that all marketing, code sharing and other ties between regional commuter airlines and the dominant major airlines at the hubs served by the commuters be severed.

Further, Congress should consider requiring these regional commuters airlines to offer linkage service to more than one hub, so that travelers from small business centers and rural areas would have maximum flexibility in competitive fares and access to major business centers. Finally, these regional commuters should be ordered to give routing preference to those major metropolitan markets that have constructed environmentally sound new airport capacity.

8. Congress should examine further incentives to encourage competition and disincentives to discourage monopoly.

Coming into the Chicago market—or any market dominated by a Fortress Hub airline—is a frightening proposition, whether the new entrant be an established major airline or a newly minted start-up. Indeed, the prospect is obviously so daunting to a major like Delta that it would rather enter into a market cartel with United rather than aggressively compete in the Chicago market.

Congress should consider creating financial incentives or enhancements to encourage entry under these daunting circumstances. Some suggestions in this area have already been made in Congress, including suggestions for loan guarantees.

We do not have any specific suggestions as to particular incentives. However, we respectfully suggest that Congress should be guided in its deliberations by two observations.

First, competitive actions by any airline—be it a major or a start-up—should be rewarded; monopolistic behavior should be penalized. Second, Congress should not be frightened by the concept of subsidies to induce new entrants to enter a Fortress Hub market. The major airlines currently receive huge subsidies from the government. We know of no other major industry that is allowed to fund virtually all of its infrastructure investment—that is, that portion which is not funded outright by federal subsidy—with tax free bonds at a subsidized low interest rate.

9. Don't wait for the Executive Branch.

There will be those in Congress and certainly in the airline industry who suggest that the solution to these problems lies with the Justice Department or with the Department of Transportation. We respectfully suggest to you that there are several reasons why Congress must and should act.

Respectfully, for the last 20 years, administrations of both parties have sat on the sidelines while the steady expansion of airline monopoly power has been in plain view. The formal announcement of alliance-cartels is but the latest manifestation of the progressive monopolization of the industry. There is no assurance that this administration can or will take suitable comprehensive action to address these problems.

Indeed, a good example of the current Administration's lackadaisical attitude toward the related problem of airport capacity, Fortress Hubs, and the airline opposition to new airports can be found in the Administration's response to Congressmen Hyde and Jackson. On October 1, 1997—more than seven months ago—Congressmen Jackson and Hyde wrote several senior department heads in the Administration with a list of detailed questions about these issues as they related to O'Hare and metropolitan Chicago airport development. To this day the Administration still has not answered that letter.

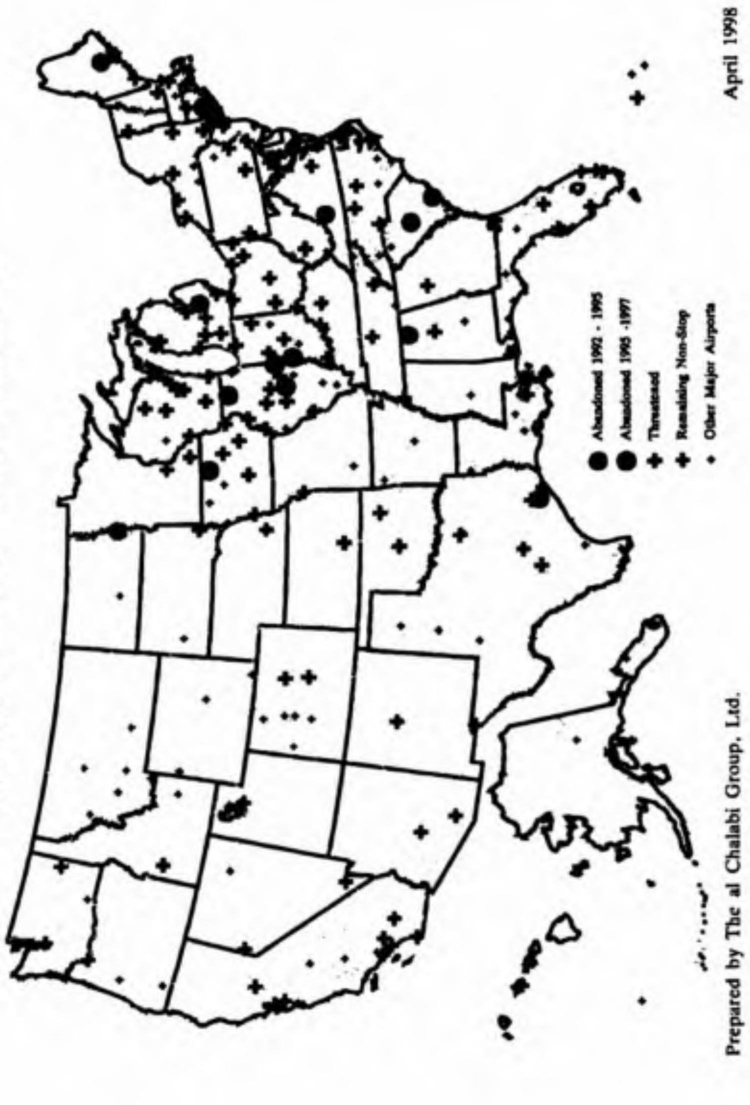
Further, judicial remedies available to the Department of Justice are limited and may not provide the breadth of relief necessary to comprehensively address the host of related problems caused by the problem of monopolization of the airline industry.

Finally, the Justice Department may soon become preoccupied with a large number of anti-trust enforcement actions involving growing of other industries.

The first step for Congress is to impose a moratorium on alliance-cartels. Then Congress should, after due deliberation, craft comprehensive legislation providing remedies to the problems we have raised in this testimony.

Thank you for the opportunity to present this information to you today.

Airports Which Lost Non-Stop Service To O'Hare International Airport
And Airports Whose Service Is Threatened



Airports/Cities That Have Lost or May Lose Non-Stop Service to O'Hare

Illinois	Indiana	Michigan	Iowa	Wisconsin
Danville	**Terre Haute**	**Flint**	**Mason City**	Appleton
Decatur	Fort Wayne	Grand Rapids	Burlington	Green Bay
Rockford	Lafayette	Kalamazoo	Cedar Rapids	La Crosse
Bloomington	South Bend	Muskegon	Des Moines	Madison
Champaign		Saginaw	Dubuque	Mosinee
Peoria		Traverse City	Waterloo	Oshkosh
Springfield				Rhinelander

New York	S. Carolina	Ohio	Other	Other (con't)
Albany	**Charleston**	Akron	**Bangor, ME**	Boise, ID
Newburgh	**Columbia**	Dayton	**Fargo, ND***	Burlington, VT
Syracuse			**Huntsville, AL**	Charleston, WV
			Houston/ Hobby, TX	Harrisburg, PA
			New Haven, CT	Rochester, MN
			Roanoke, VA	Wichita, KS

Have Lost Service: 1992 - 1997
***Lost Service After 1992, Regained 1997;** and
May Lose Service: 1997 -

RUNWAYS
O'HARE INTERNATIONAL AIRPORT

Mr. HYDE. While you're here, I want to ask you a couple of questions. Now I have not gotten the cooperation from the Department of Transportation, or any of the agencies that I wrote about O'Hare Field. Now, we have had trouble in Congress trying to close military bases because politics is so heavily involved with closing this base, it means jobs and power and that sort of thing. So we finally had to set up a commission that was non-political to list those bases that ought to be closed. And in that way, we almost avoided serious political interference with doing something that was economically and militarily necessary.

Now when you get to talking about airports and creating a new airport, you're stepping on some pretty big political toes. In the Chicago area, you certainly are. If you could build it in Chicago, they'd be all for it, and we're all for it once until it turned out to be an impossible dream. But I'm just wondering if that maybe isn't the reason I'm not hearing from anybody. Is that the mayor of the City of Chicago has an abiding interest in enhancing O'Hare, doubling the capacity. However you do that, I don't know, unless you have planes that vertically take off. And forget about the third airport, even though we desperately need one.

Mr. KARAGANIS. Mr. Chairman, the previous witness alluded to the problem of the relationships between the airport operators and the major carriers and their both lease hold and other relationships. I think if there were financial disincentives and incentives for the majors to open up new capacity in Chicago, the City of Chicago would turn around in a minute.

The major problems we have here are the major carriers who do not want new capacity entering Chicago other than new capacity they can control.

Mr. HYDE. Well, I want to thank you all. This has been quite a day. And your patience was equal to Mr. Karaganis because you all had to wait the same time. But you've made a great contribution. And I don't want to foreclose questions, although I know you've been here a long time. So Mr. Conyers, please.

Mr. CONYERS. Well, I won't be as long as some of the witnesses, Mr. Chairman, but—Jim West, the chief security officer at Northwest Airlines in Detroit asked me to convey my greeting to Mr. Seiden, the vice president of Northwest Airline. So I wanted to do that; show that we're friends. I trust you flew in, in time to make this meeting this morning?

Mr. SEIDEN. Mr. Conyers, I'm based here in Washington.

Mr. CONYERS. And you didn't have to fly.

Mr. SEIDEN. I'm flying out tonight.

Mr. CONYERS. Well, I had to fly in this morning, and flight 222 was cancelled. [Laughter.]

It was a 7:15 a.m. departure; I got up at 5 to make it. But no problem. [Laughter.]

We went to—but I was able to get on a Dulles flight immediately after. This is Dulles. It cost $32 dollars in taxi fare after I landed to get here, but I made it okay. And I want to wish you luck in going out tonight. [Laughter.]

There have been increasing cancellations. Is there some tension between the employees, and the unions, and the management of Northwest at this present moment?

Mr. SEIDEN. Yes. [Laughter.]

Mr. CONYERS. Well, that's a great response. Well, that takes care of that.

Mr. SEIDEN. I suggest you leave it there. [Laughter.]

Mr. CONYERS. I just wondered. I wasn't sure.

Mr. SEIDEN. Mr. Conyers, we have been in contract negotiations with our 6 unions, including our 3 major unions for about 18 months now. We are at the final stages, we hope, of our contract negotiations with the IAM. But as frequently happens in the airline industry, when employees get frustrated, as the collective bargaining process winds down, they frequently take matters into their own hands. And it's been no secret that there has been a work slow down going on at our major hubs that has created an operational difficulty for us and our customers. We're trying our very best to manage through it. And we're trying our best to get a new collective bargaining agreement with our employees as soon as we can. I apologize for the inconvenience. You're not the only one. All of our customers are——

Mr. CONYERS. No, they cancelled everybody that was on the flight. [Laughter.]

It wasn't anything personal. [Laughter.]

Everybody got it.

Mr. SEIDEN. Well, we hope to get the collective bargaining process behind us——

Mr. CONYERS. Sure.

Mr. SEIDEN [continuing]. As soon as we can and get back to regular operations.

Mr. CONYERS. You know, that's exactly what the union people out there tell me, too, that they're trying to get through the collective bargaining process, and get back to work as soon as they can.

Let me ask you about this, it refers to Mr. Kahan's reference about Spirit Airlines, because there was Senate testimony that suggested that Northwest changed the marketing—the pricing of tickets to Detroit and Boston immediately following Spirit's entry with fare reductions until Spirit went out of business——

Mr. KAHAN. We didn't do that.

Mr. CONYERS. I beg your pardon?

You didn't go out of——[Laughter.]

Mr. CONYERS [continuing]. I mean you left the market?

Mr. KAHAN. We certainly did that.

Mr. CONYERS. You left the market in Detroit.

Mr. KAHAN. Yes.

Mr. CONYERS. This is from the Wall Street Journal, April 20th, 1998, and Spirit was driven out of the market, and that Northwest promptly raised its average fares to $189.52 in the 4th quarter, an increase of 167.5 percent. So you know, this is a matter that deals with the whole question of antitrust, monopoly, pricing, the market being reduced—some say to four, some say to three major air carriers. And all of this being done in the spirit of deregulation and a fairly good economy. Your comments, please.

Mr. SEIDEN. Well, Mr. Conyers, we've heard the word "monopolist" and "monopolistic" thrown around this afternoon with a great deal of frequency and I might say a great deal of imprecision. If we are monopolists, we give new meaning to the term. If we are monopolists, we are the gang that couldn't shoot straight. We are an industry that earns sub-par rates of return. We are an industry that is ranked near the bottom of every financial measure that Wall Street looks at. We have the lowest rates of return on investment. We have the lowest net profit margins of virtually any industry that the financial analysts track. So it's very hard to look at the outcome that we produce across our systems and say that we are monopolistic or monopolists.

As for the issue of our fare practices, I would like to make the following points, Mr. Conyers.

First, we are confident that in every case, our pricing has covered an appropriate measure of cost and has not been predatory as the Supreme Court has defined predatory.

Second, as is reflected in my testimony, we have cataloged between 1992 and 1997, 32 instances in which Northwest Airlines, or Northwest Airline's market, has been subjected to competition from a low-fare new entrant. Of those 32 instances, in 16 of them the low-fare new entrant is still in the market competing away. And in 16 the low-fare new entrant exited. In every one of the cases, we matched the low-fare new entrant's fare. In 10 of the 16, where the low-fare new entrant exited, we increased capacity. In 6, we did not. And in 10, where the low-fare new entrant is still competing, we increased capacity. And in 6, we did not. And from all that, I infer the following: On a priori basis, no one can predict what the outcome will be when a major carrier and a low-fare new entrant get into one of these competitive battles. But in all of these cases, consumers benefit. Certainly, in the 16 where the low-fare new entrant is still competing in our market. And by the way, the amount of our system that is now subject to low-fare competition has gone up from 2 percent in 1992 to 18 percent today.

Consumers have benefited from that hard competition enormously, Mr. Conyers. And if the DOT's rules were in effect, I believe that in none of those 32 markets, none of them, would Northwest have been permitted to lower its fares and increase its capacity to meet the competition. And so this, we believe, would have been a serious harm to consumers. And we think the Government should stay out of that. We think the rules against predatory pricing, as they have been defined by the Supreme Court, are adequate and sufficient to ensure that pricing in the U.S. airline industry is fair and reasonable.

Mr. CONYERS. I'm delighted to hear that.

Mr. Kahan, do you have any comments about the parts of the Wall Street Journal article that I've just read? Which by the way, I've looked through it carefully. It does not contain the word "monopoly" or "monopolist." So in the event that it was used in our discussion, it was my term, not that in the article to which I referred.

Mr. Kahan?

Mr. KAHAN. I don't think it's unreasonable to consider Northwest a monopolist in the Detroit/Boston market. I believe those are two of the major cities in the country. There's a lot of traffic. And they are the only carrier that serves that market today.

Mr. CONYERS. What term would you prefer, Mr. Seiden, other than monopolist. It is rather, you know——

Mr. SEIDEN. Competitor.

Mr. CONYERS. Competitor?

Mr. SEIDEN. Anybody is free to enter the Boston/Detroit market. Mr. Kahan's company tried it, and apparently felt that there were better things to do with its assets. Another market where Mr. Kahan's company entered and left was Detroit/Philadelphia. The implication there, being that we monopolized that market as well. But I noted that just yesterday another low-fare new entrant, this time known as ProAir, has entered the Detroit/Philadelphia market to try it again.

Mr. CONYERS. Sure.

Mr. SEIDEN. And they're free to do that.

Mr. CONYERS. Absolutely. Because as the saying goes, "Some people just know how to fly." Right?

Mr. SEIDEN. That's what we say about ourselves. But in the Detroit/Philadelphia market—and I've taken a look at that as an example of what the possibilities are. In the Detroit/Philadelphia market, there are 370 passengers a day who fly between Detroit and Philadelphia; that's it. There are approximately 11 round-trips a day provided right now by Northwest and U.S. Airways. There are two airlines flying Detroit/Philadelphia. If a carrier like ProAir comes in with 2 flights a day which is what has come in with 146 seats on each plane for a total of about 290 seats, ProAir has no access to connecting traffic at either end because they don't have hubs. And if ProAir looks at that market, they are going to be able to get about 17 percent of the seats if they get their pro rata share. And that will mean for ProAir, a load factor of about 22 percent. And it's very difficult to remain in a market when you get 22 percent load factor. ProAir would have to stimulate that market by 200 percent in order to get itself up over a 60 percent load factor. It's had an $89 dollar fare. When Mr. Kahan's company was in that market, it put it's fare at $49 dollars and stimulated the market by 60 percent, not 200. At a 60 percent stimulation, ProAir would be operating at a 34 percent load factor. So, it may well be that ProAir has a new way of making money in the airline business.

But when you look at these basic data, one has to wonder what they see, and what they expect to achieve. Now they're free to try. It's a free country and they're free to put their capital anywhere they wish, but the fact of the matter is, the market has 370 passengers that has to be divided up among 3 carriers. And ProAir is going to have a hard time finding a way to get its load factors up.

Mr. CONYERS. So you see, Mr. Kahan, this was a market-driven result. And to single out one of the larger airlines as being responsible in any way for the commercial misadventure that you sustained—look, that's how the market works, my man.

Mr. KAHAN. May I make a brief comment, sir?

Mr. CONYERS. Yes.

Mr. KAHAN. In fact, we were successful in Detroit/Philadelphia for several months. It wasn't until we decided to go into Detroit/Boston, and not until after the ValuJet crash, when there was a public perception about smaller airlines that there might be a problem, that Northwest dropped the fare in Detroit/Philadelphia.

Mr. CONYERS. Did that have an impact on your——

Mr. KAHAN. Let me give you some figures. And this is in the record, chart 3, of the enclosure to my testimony. Because there are a few things that Elliott says that have a disconnect. Just looking at Detroit/Boston for a moment. On the one hand, he tells you that the average fare of $100 in the Detroit/Boston market, while we were in it in the 3rd quarter of 1996, covered his full costs. That's what he told you. He also told you that the airline business is a business of very small margins. When we got out of the market, the average fare went up to $267 dollars, which is obviously a 250 percent increase. Now the purpose of the Sherman Act is to ward against monopoly. Clearly, if somebody is in a small margin industry, and $100 is covering his costs and he is able to get $150 more, than he must have monopoly power. Now these things are under investigation by the Justice Department and what we're going to have to get into, I am sure, it's a lot of detail. Northwest has very sophisticated antitrust counsel. To get to the truth, but having lived through it, I can assure you it is more than a two Alka-Seltzer experience. [Laughter.]

We had no choice but to exit that market, even though in the Detroit/Philadelphia market we had shown that there was clearly a market for our product and that Northwest hub and spoke system didn't fall apart.

Mr. CONYERS. Well, I want to thank you and the chairman for indulging me in that. I just wanted to say to Attorney Karaganis, have you discussed this matter with you and Chairman Hyde and my good friend, Jesse Jackson, Jr., with another colleague of mine, a good friend from Illinois named Glen Poshard? [Laughter.]

Are you aware——[Laughter.]

Mr. HYDE. Mr. Poshard does not favor a third airport. But he——

Mr. CONYERS. Well, just a moment, Mr. Chairman, you are not Glenn Poshard. You are Chairman Hyde.

Mr. HYDE. Thank you for straightening me out on that. [Laughter.]

Mr. CONYERS. I'm here to help. But now the question went to the witness.

Mr. KARAGANIS. If I may?

Mr. CONYERS. Yes, sir. I'm waiting.

Mr. KARAGANIS. I would like the opportunity to provide you with Congressman Jackson's remarks and correspondence regarding Congressman Poshard. Congressman Poshard is—we've met with him. He's a very likeable and intelligent, knowledgeable Congressman—particularly about aviation issues. Needless to say, because of the lock that the City of Chicago has on airport development—in part because of the Congress' policies on PFCs that the chairman alluded to—that Congressman Poshard has expressed a great reluctance to take a stand on the need for new capacity in the region. Congressman Jackson has engaged in rather strong correspondence with Congressman Poshard regarding this issue. But right now, Glenn Poshard is sitting on the fence or on the other side.

Mr. CONYERS. Well, he hasn't come out against Chairman Hyde and Congressman——

Mr. KARAGANIS. Yes, sir.

Mr. CONYERS. He has?

Mr. KARAGANIS. Yes, sir.

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Mr. CONYERS. I didn't—I wasn't aware. Well, that's why I asked, and that's probably why Chairman Hyde was able to supply an answer if you hadn't been here. [Laughter.]

So, I thank you very much, Mr. Chairman.

Mr. HYDE. We always know when we're rejected. [Laughter.]

Mr. Chabot.

Mr. CHABOT. I thank the chairman for holding these important hearings. And I just had a couple of questions. Mr. Yohe, of Delta, I have a couple of questions for you. The Greater Cincinnati Northern Kentucky community has benefitted in many ways from having a Delta hub in our community, from jobs to the availability of nonstop flights and so on. However, I continue to be concerned about the cost of air travel from the Greater Cincinnati Northern Kentucky Airport. And my constituents continue to ask me about that, and they have repeatedly asked me why the fares to and from Cincinnati seem to be so much higher than elsewhere. And the Cincinnati Post has reported that Cincinnati is one of only four airports where fares are higher now than they were before deregulation.

Can you tell me why consumers in Cincinnati have not benefitted from deregulation to the extent that consumers in the rest of the country have? And what steps can be taken to lower fares into and out of the Greater Cincinnati/Northern Kentucky Airport?

Mr. YOHE. Thank you, Congressman. We've had a lot of conversations about Delta's presence in Cincinnati Northern Kentucky, and what we've done there which is truly a success story under deregulation. And there are a lot of factors; there's not one factor that contribute to the fare structure in that particular market. But as you're well aware, probably the biggest reason is that there's a fairly small local O&D base in relation to the overall level of service that exists at that particular airport.

Just by way of comparison, look at Indianapolis. Indianapolis has about the same size local market in terms of overall market. Local passengers, there is about five times what's in Cincinnati, but Cincinnati has five times the number of flights that Indianapolis has. So, you've got a much greater cost structure that has to be paid for. And that is one of the reasons why you have a premium that does not exist at another community of that size. The advantage is—as you point out—number one, business travelers get non-stop service to 73 places around the United States. They have service to eight international destinations non-stop. Cleveland, which is a hub of much bigger size, has zero. You mentioned some of the economic benefits. So there are trade-offs involved.

I disagree with the suggestion that the premiums are exorbitant or that premiums are excessive. I'm not sure what data you referred to in terms of the Kentucky Post, I guess, or Cincinnati Post article that you mentioned. I looked at three markets in preparation for this hearing today because Mr. Mitchell and others like to complain a lot about fares out of Cincinnati. And I looked at three business class markets of different size—Boston, Los Angeles, and one that is slot-controlled, which you'd think fares were going to be higher, La Guardia. And if you look in 1979 to 1997, which was a comparison you just spoke of, in terms of the article in the paper, in those 3 markets, traffic went up 74 percent in those 3 markets.

Fares and constant dollars over that time period, 1979 to 1997, overall decreased 7 percent. So again, the experience that you cited isn't necessarily true in all markets. And again, you have to look at what the numbers are. I know the Department of Transportation numbers, the GAO numbers that are constantly pointed to use average fares which are published fares which do not accurately represent the full range of discounts that are in the market.

I would point out that in Cincinnati, about 85 percent of all of our customers use some form of discount. So, there are discount fares out there, and they are being taken advantage of by our consumers.

Finally, I would also point out to you that the market is working pretty well, because we're running load factors in Cincinnati of 75 to 80 percent.

Mr. CHABOT. Mr. Chairman, I ask consent for one additional minute.

Mr. HYDE. Without objection.

Mr. CHABOT. For a quick follow-up question. In addition, as you know AirTran flights from Cincinnati to Orlando and AirCanada flights to Toronto were recently suspended at the Greater Cincinnati Airport. To what do you attribute that withdrawal? And what happened to Delta fares on those routes after those competitors left the market?

Mr. YOHE. I don't know why they left those markets. We've had a lot of experience with ValuJet, AirTran. They're in Atlanta; they've been in Atlanta since 1993. They've been in and out of a lot of markets. I don't know what their reasons were for exiting the Orlando markets. I don't know what the fare was prior to their exit, but I did check—because someone mentioned this to me—and I think the round-trip in the Cincinnati/Orlando market today on Delta is $194 dollars round-trip. But I don't know what it was before, but I'll be happy to provide——

Mr. CHABOT. Could you provide that?

Mr. YOHE [continuing]. That to you, Congressman. Yes, Sir.

Mr. CHABOT. I thank the chairman.

Mr. HYDE. I thank the gentleman.

The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. Yes, thank you, Mr. Chairman. Well, we certainly had a lot of information presented to us. And I particularly want to thank Mr. Karaganis for his rather, I think, refreshing testimony. And I think the point that really struck home was when you indicated that we, meaning Members of Congress, and probably most of us on this committee, are just beginning to sort things out and are really trying to find out what the right questions are. I mean, put aside even coming up with some answers. And I think it's important. I know the chairman's been really prioritizing his concerns and most of our concerns about mergers and acquisitions. But I think it is necessary to really get into these particular issues and really start to understand them—because this is a whole new language. This is all new terminology—slots, gates. I mean don't think that we're all sitting here understanding what you're saying because that simply isn't the case. But I do think that this might be the time to take a good, hard look. We have two Federal agencies that have jurisdiction. But it could very well be the time for this committee, or maybe—and I keep suggesting this to my friend, Mr. Hyde—to have a select subcommittee look at some of the more significant mergers in a whole spectrum of industries, and probably start off with what's happening with the airlines. Because what I'm hearing today is that yes, we've had deregulation but it's kind of a quasi-deregulation. I had no idea that there are subsidies that are supporting even the major carriers. There was a comment—I think it was made by Mr. Yohe—about the market being consumer driven. Well, yes, consumer driven when it coincides with the bottom line for the stockholders. I mean, what we are talking about here is public policy and what benefits, not just the corporation, but the American people at large. That's our role.

I think you gave us a lot to reflect on, to think about. And what I would like to do is urge the chairman to start to examine each of these alliances in a way that could really utilize an expanded staff. So we could really start to ask some hard questions, because I think that's the best way for us to learn what the questions are, and what maybe the answers are. And I just will see if anybody has a response to that.

Mr. Karaganis, or Mr. Mitchell, or anybody?

Mr. KAHAN. I understand what you're saying. I've been in this town for 20 years, and really antitrust enforcement was really dormant for a long time. And there was a climate of opinion which held, "back off." And I think all of us are struck—certainly I am—by the degree of merger activity right now. And I think over the next 5 or 10 years, we're going to find out whether antitrust is still relevant to our economy and to our country. I can tell you—bringing it back to Spirit's experience—we'll find out in the Detroit/Boston and in the Detroit/Philadelphia situation whether there is such a thing as predation under the antitrust laws. Because if it can occur in that market——

Mr. DELAHUNT. You know what I'm concerned——

Mr. KAHAN. Yes.

Mr. DELAHUNT. I'm obviously concerned about the marketplace. But I'm also concerned about now and the next 2, or 3, or 4 years. What it means to the people whom I represent in the greater Boston area, for example. And if there's something that we can do that's appropriate, I think we have a responsibility. We just can't wait for the market to make that determination if what is occurring now is deleterious to the best interest of the people whom we represent.

Mr. KAHAN. Well, it's been about 30 years since I reflected on it, but Justice Brandeis had his comments in, I think it was the Chicago Board of Trade case, that one of the functions of antitrust was to keep companies at a reasonably sized level so that they didn't lose contact with the public, shall we say. We sort of found that out of antitrust then, as we'll probably—well maybe it will, maybe it won't come back. But we are definitely in a transitional period now from the standpoint of the development of antitrust. And I think that the airline industry will be a good place to find out whether it works or not.

Mr. HYDE. The gentleman's time has expired.

The gentleman from Georgia, Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman. During the time that I served as a U.S. attorney, it always was sort of fun to watch in some cases that we had where there were a lot of defendants. The different strategies that they use. Some would try and move their chair way off to the side of the room and say, you know, to emphasis that they were in their view just a small player and shouldn't be linked up with these other folks. And others would take the position that, you know, yes, maybe we did something wrong, but the others did something worse. And, you know, they're all bad but not us, or what not. This obviously is not that sort of situation. And I don't mean to imply in any way, shape, or form that it is, but I think for anybody who is concerned about consumers, they ought to be very worried about what the Department is starting to do here, I think.

And even though one of these proposed alliances may be a little different than another, I would not take, Mr. Joyner, great solace in saying that yours is smaller than the others. They're going to come after you, too, if they go after the other airlines. So, I'm not sure that I would spend a lot of time criticizing and trying to distinguish the others, because what the Department—or Mr. Seiden also, you know, saying that their alliances are bad but yours is good. I don't think that is really what we're starting to see develop here with the Department of Transportation which I think is going beyond—as Mr. Hutchinson, I think also indicated, perhaps, in some of his questions to Ms. McFadden—I think they are going beyond what Congress intended. And I think they are making a play for de facto prior approval, even though they don't have it statutorily. That's the Department of Justice, and I think we're going to see, for whatever reasons—whether it's political, whether it's true economic theory on the part of this administration, or what not—I think we're going to see some very serious activity against airlines. I sort of see the handwriting on the wall here. And I would just think that the airlines, all of whom are concerned certainly with making a profit for their shareholders, you know, there's nothing wrong with that. But the way they make that profit for their shareholders is to provide a service to the consuming public. And I would think that anybody who is concerned about that, whether it is from an airline or whether it is on behalf of a group of folks, or business travelers, or what not, should be worried about—at least a little bit worried about—what the Government is starting to do here. That would just be my word of caution. And rather than let the Government, which is always more than willing to see the different players in the business arena and the private enterprise arena fight with each other, and then they come in and regulate everybody. I would really think that you all ought to think long and hard, those of you that are taking shots at each other to remember who the main adversary is. And the main adversary, I think, is big Government trying to regulate the marketplace more and more and more. We saw it yesterday going after Microsoft. You hear it on some of the comments on the other side of the aisle here, that simply because an industry is big, that that scares people. And that's going to be reflected in more and more administration policies. Again, for whatever reason, whether it's directly tied to the industry, whether it's for political reasons, or something else.

So I think all of our airlines ought to be very careful about criticizing their colleagues because the Government, I don't think, is going to let you off the hook simply because you've criticized your colleague and you're good. What they're trying to do here, I think, is to start regulating the market a great deal.

One thing that worries me, and maybe the three gentleman on the end here could answer this briefly, Mr. Chairman. In looking at some of the proposals that we heard about earlier, and that you all know a great deal about anyway by having looked at this stuff very carefully that the DOT is proposing. How would one of the major carriers know when they have triggered the thresholds that the Government is talking about here, when they don't even have enough information about the amount of low fares being offered by competitors? This is one aspect of what DOT was talking about that worries me. Maybe if, Mr. Joyner, if you could just comment briefly on that? Just to sort of one aspect of this problem that I think is going to be problematic. And then the other two——

Mr. JOYNER. I think the answer quite clearly, if I understood your question, is it's very difficult to determine that. And discussion from a number of members of the committee today address that key issue in defining what is the right measure for differentiating natural, aggressive competitive behavior that brings consumer benefit as opposed to behavior that is unacceptable.

And American's only position in that matter is that we believe that antitrust law provides the most robust and the most tried and true way of determining what's appropriate behavior. And the proposed Department of Transportation guidelines are probably not necessary within that context.

Mr. BARR. Thank you. Mr. Yohe?

Mr. YOHE. I think that's one of the dangers of trying to define with precision exactly what the rules of engagement ought to be. When you do that, you end up really undermining the objective that you're trying to accomplish. And I think that one of the problems that we've got with the DOT rule in this particular case is their vagueness and the inability to understand how they're going to be enforced. And to the criteria that you mentioned, we would have to know, literally what our competitors are doing in terms of number of passengers and at what fare in order to know whether or not we could put in a certain price in the market, and how much capacity we could put in the market. We don't have that information available to us, so again, we're being asked to comply with a standard where we truly don't have the information necessary to even make a judgement about it.

Mr. BARR. Thank you.

Mr. Seiden?

Mr. SEIDEN. I agree with both what Mr. Yohe and Mr. Joyner said. We have no way of knowing how many seats are being sold by another airline at a particular price. Nor do we have anyway of knowing how many passengers actually flew on a particular price. And so we will have to respond at our peril that a post-hoc investigation of what we did proves that we guessed wrong. The only safe thing that we will be able to do, if these guidelines are in effect, is to stop competing against new low fare entrants, because anything else that we might do could run afoul of these guidelines.

The most important things that the DOT has done is they've thrown the Supreme Court's test for predatory pricing out the window. And you pretty much heard Ms. McFadden say that that's true. The price cost test in the Brook case has been thrown out the window, and the recoupment test has been thrown out the window. And so the protections that the Supreme Court and the Courts of Appeals have built in to the predatory pricing rules to ensure that they not chill hard, legitimate competition, the DOT has thrown those protection out the window.

Mr. HYDE. The gentleman's time has expired.

Mr. BARR. Thank you.

Mr. HYDE. The grand finale, Mr. Pease, the gentleman from Indiana.

Mr. PEASE. Thank you, Mr. Chairman.

I apologize to the panel. I appreciate your time here, but as with many of us, running in and out to other hearings, I didn't get to hear all your testimony. But I have it; I appreciate it.

Mr. Mitchell, I'm wondering if you could advise us on what you think is the best way to ensure competition at hub airports and at medium-sized airports. And if there's a set of many things that you would recommend, I would be curious to know all of them.

And then, I'd also want to hear the same thing from the major carriers.

Mr. MITCHELL. Well, I think whether it's large airports or mid-sized airports, the problems fall into three categories. The first reason that we're suffering the high business air fares that we have today in many parts of the Northeast and the Midwest is that decisions were made in the 1980's regarding some consolidation of the industry. Republic and Northwest, TWA and Ozark, and so on. That sets the stage for the fortress hubs we have today. So if we don't apply vigilance to these proposed alliances that we're talking about today, we may be setting the stage for the entire United States to become one gigantic fortress hub as the airlines move on into their global markets.

Number two, the Federal Government has restrictions that are still in place that inhibit competition. We've got the perimeter rules, the high-density rules. We've got the Lovefield situation with the right amendment, so we've still labored with these restrictions.

And thirdly, we've got the whole issue of predation and anti-competitive practices that include babysitting slots and not subleasing gates at some of these airports.

So there are three areas that need close examination.

Mr. PEASE. I do want to ask, and I also want to let Mr. Kahan respond to that, too, but some have said that the method for constructing improvements at airports is resisted by major carriers because it provides avenues for more competition. How do you respond to that allegation?

Mr. MITCHELL. Me?

Mr. PEASE. Yes.

Mr. MITCHELL. I think it's no secret that at the major airports around the country, they're in the pockets of the airlines, the major airlines, under direct control. I don't think there's any secret in the industry about that.

Mr. PEASE. I obviously want to hear other folks' response on this, too. But Mr. Kahan, your thoughts on improving competition at mid-sized and hub airports.

Mr. KAHAN. Well, I think the single most important thing is to march along and get the rules of the game straight. And I was very upset to hear that the Department of Transportation is adding 60 days to the comment period for the competition guidelines. I'm all for full and fair consideration of it. But I've never heard of a Government proposal that required 150 days total time for an industry which is pouring millions of dollars into economists and lawyers to analyze it to move faster than that. And that has me very, very worried. So, what I'd like to see first and foremost is some assurances.

I'd like to see some encouragement by this committee to the Department of Transportation that they not unduly delay that proceeding. We were not in Detroit/Boston for 150 days. [Laughter.]

From the entry to exit, was less than that. So, that's my contribution to your question.

Mr. PEASE. Okay, thank you. I'd be curious to know from the— and I don't want to exclude anybody—but from the major carriers, your thought on the best way of increasing competition at mid-sized and hub airports. And you can respond to Mr. Mitchell's observations, too, if you'd like.

Mr. SEIDEN. Well, one of the most important steps that I think both the administration and the Congress could take is to reform the air traffic control system that would dramatically increase the capacity the system can manage today. Right now, I think the largest constraint on the ability to achieve a fully competitive system, is the fact that we're coming close to gridlock as the National Review Commission pointed out in its report issued late last year. We're coming close to gridlock in the skies. There's not enough capacity in the air traffic control system. And something dramatic is going to have to be done about that, and have to be done about that fast.

As for competition at mid-sized airports, I think I would agree with one point Mr. Kahan made which is competition through the hubs, and that's basically the kind of competition you're talking about at mid-sized cities. It is very vibrant. You can go out to pretty much any spoke city in the country and get to anywhere you want to go on six or seven airline network systems. And so it's a very competitive system, and that's why our rates of return are so low.

If I may make one brief comment about airports. We are building a major, with Detroit Metro Airport, the Wayne County Authorities, we are building a major improvement at Detroit, a new midfield terminal which will substantially increase gate capacity at Detroit, both for ourselves and for other airlines, and when that facility comes on stream—around 2001.

Mr. PEASE. Thank you.

Mr. HYDE. I'm—with the indulgence of my good friend, I would like to close the hearings because it is 4:15 plus, and you folks have been here for a long time.

What I do want to tell you sincerely that Mr. Conyers and I have both expressed several times, what a really fine panel you were and what a great contribution you made to our understanding alliances and what they can mean. And that there is merit on all sides of this, and we just have to plow through it. But you've made a great contribution and we thank you all. Thank you.

The meeting is adjourned.

[Whereupon, at 4:15 p.m., the committee adjourned subject to the call of the Chair.]

APPENDIX

Material Submitted for the Hearing Record

Congress of the United States,
U.S. House of Representatives,
Washington, DC, July 21, 1998.

Hon. Joel Klein, *Assistant Attorney General,*
Antitrust Division,
U.S. Department of Justice, Washington, DC.

Dear Assistant Attorney General Klein: I appreciate your appearing before the Committee on the Judiciary to testify at the oversight hearing on "The State of Competition in the Airline Industry" on Tuesday, May 19, 1998.

Members of the Committee have asked that you answer additional written questions for the record. I have attached a copy of the questions. I would appreciate your answering the questions in writing and returning your answers to the Committee for inclusion in the hearing record at your earliest convenience.

If the Committee can provide you with any additional information, please do not hesitate to have your staff contact Joseph Gibson by phone at (202) 225–3951 or by fax at (202) 225–7682. I appreciate your participation in our hearing.

Sincerely,

Henry J. Hyde, *Chairman*

cc: Hon. John Conyers, Jr.

Questions for Assistant Attorney General Klein and General Counsel McFadden

QUESTIONS FROM CHAIRMAN HYDE

1. At the hearing, I asked when I would receive a reply to the letter that Congressman Jesse Jackson, Jr. and I sent to you and other Administration officials October 1, 1997 about airport issues in Chicago. I was told that I would receive an answer within the next few weeks. Today, two months after that representation and almost ten months after the letter was sent, we have not received a reply. I repeat my question from the hearing: When can we expect an answer to our letter?

2. Currently, there is extensive litigation in state court in the Dallas, Texas area concerning what is known as the Shelby Amendment. Department of Transportation and Related Agencies Appropriations Act of 1998, Pub. L. No. 105–66, 111 Stat. 1425, 1447, §337 (October 27, 1997). The Shelby Amendment loosened some restrictions on the use of Love Field in Dallas. However, to date this litigation has frustrated the purposes of the Shelby Amendment. Does this litigation implicate the federal interest in the freedom of interstate commerce? Does this litigation implicate the federal interest in antitrust policy? If so, are these substantial federal interests being adequately protected in this litigation? Is this an appropriate case for federal government intervention in a state court action?

3. Over the past several years, the major air carriers have cut the commissions that they pay to independent travel agents. In addition, I am informed that these same carriers compete against the independent travel agents through their ownership of Scheduled Airlines Traffic Offices, Inc. ("SATO"). I am also informed that the airlines may give preferential treatment to SATO. Does the cutting of travel agent commissions coupled with preferential treatment for SATO raise any antitrust concerns? If so, what are those concerns? Are there any regulations that govern this type of conduct? Also, I understand that the federal government is one of the pri-

mary customers of SATO. Is the government getting its money's worth in this relationship?

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, September 17, 1998.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for giving Joel Klein the opportunity to testify at the hearing on "The State of Competition in the Airline Industry" on May 19, 1998.

Enclosed are the responses to the written questions for the record that you sent to Mr. Klein on behalf of the Committee after the hearing.

If you have any questions, please do not hestitate to contact me.

Sincerely,

L. ANTHONY SATIN,
Acting Assistant Attorney General.

ANSWERS TO QUESTIONS FOR THE RECORD FROM CHAIRMAN HENRY J. HYDE

MAY 19, 1998 HEARING ON STATE OF COMPETITION IN THE AIRLINE INDUSTRY

1. At the hearing, I asked when I would receive a reply to the letter that Congressman Jesse Jackson and I sent to you and other Administration officials on October 1, 1997 about airport issues in Chicago. I was told that I would receive an answer within the next few weeks. Today, two months after that representation and almost ten months after the letter was sent, we have not received a reply. I repeat my question from the hearing: When can we expect an answer to our letter?

A: We apologize for the inconvenience that the delay in responding to you has caused. Because your letters were directed primarily to issues within the authority of the Federal Aviation Administration and the Environmental Protection Agency, we had hoped to respond to you jointly with those agencies. We eventually took the liberty to respond to your antitrust concerns in a separate letter. We understand that you have now received your letter from the other agency officials as well.

As you know, we are currently investigating possible anticompetitive practices by hub airlines. We are very sensitive to your interest in the progress and outcome of the investigation and will work to keep you apprised of developments as they become public. I can assure you that this investigation is progressing at a pace consistent with the objectives of responsible federal antitrust enforcement.

2. Currently, there is extensive litigation in state court in the Dallas, Texas area concerning what is known as the Shelby Amendment. Department of Transportation and Related Agencies Appropriations Act of 1998, Pub. L. No. 105–66, 111 Stat. 1425, 1447, § 337 (October 27, 1997). The Shelby Amendment loosened some restrictions on the use of Love Field in Dallas. However, to date this litigation has frustrated the purposes of the Shelby Amendment. Does this litigation implicate the federal interest in the freedom of interstate commerce? Does this litigation implicate the federal interest in antitrust policy? If so, are these substantial federal interests being adequately protected in this litigation? Is this an appropriate case for federal government intervention in a state court action?

A: The City of Fort Worth initiated the litigation over the Shelby Amendment last October, by suing the City of Dallas in Texas state court. That suit seeks to compel Dallas to continue restricting flights out of Love Field in conformance with the so-called "Wright Amendment" enacted by Congress in 1979—even though Congress modified the Wright Amendment in enacting the Shelby Amendment—claiming that a contractual agreement obligates Dallas to do so. The City of Dallas responded by suing the City of Fort Worth and the U.S. Department of Transportation to obtain a declaratory judgment that Dallas is legally required to permit the additional flights authorized by the Shelby Amendment. In July, a few days after the Department of Transportation authorized Continental Express to initiate flights to Cleveland out of Love Field, the state court granted a preliminary injunction barring the airline from initiating such flights until the court rules on the merits.

Because the Department of Transportation is a party to one of these cases, the United States is already involved to that extent. We also understand that the Department of Transportation, which has responsibility for administering the underlying statute, has opened an administrative proceeding which will address these issues on a Federal basis.

3. Over the past several years, the major air carriers have cut the commissions that they pay to independent travel agents. In addition, I am informed that these same carriers compete against the independent travel agents through their ownership of Scheduled Airlines Traffic Offices, Inc. ("SATO"). I am also informed that the airlines may give preferential treatment to SATO. Does the cutting of travel agent commissions coupled with preferential treatment for SATO raise any antitrust concerns? If so, what are those concerns? Are there any regulations that govern this type of conduct? Also, I understand that the federal government is one of the primary customers of SATO. Is the government getting its money's worth in this relationship?

A: SATO Travel is an organization owned jointly by major airlines that provides airline ticketing and other travel services to government agencies and large corporations in competition with travel agencies. As a joint venture among horizontal competitors, it could raise a number of potential antitrust concerns. The most significant theoretical concern about a venture of this nature is that it could be used to constrain competition among airlines for prices or services. It also could conceivably be used to monopolize the business for large travel accounts. We are aware of no regulations, other than the antitrust laws, that govern the competitive conduct of SATO.

We have thus far not found reason to believe that airlines have used SATO to attempt to monopolize the business for large travel accounts or to restrain interbrand competition between airlines to the detriment of the business traveler or the government.

Whether the government is getting its money's worth from SATO services is a different question, one that we are not equipped to answer; but at this point we know of no antitrust-related reason to doubt the cost-effectiveness of SATO's services to the government.

CONGRESS OF THE UNITED STATES,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC, July 21, 1998.

Hon. NANCY MCFADDEN, *General Counsel,*
U.S. Department of Transportation, Washington, DC.

DEAR MS. MCFADDEN: I appreciate your appearing before the Committee on the Judiciary to testify at the oversight hearing on "The State of Competition in the Airline Industry" on Tuesday, May 19, 1998.

Members of the Committee have asked that you answer additional written questions for the record. I have attached a copy of the questions. I would appreciate your answering the questions in writing and returning your answers to the Committee for inclusion in the hearing record at your earliest convenience.

If the Committee can provide you with any additional information, please do not hesitate to have your staff contact Joseph Gibson by phone at (202) 225–3951 or by fax at (202) 225–7682. I appreciate your participation in our hearing.

Sincerely,

HENRY J. HYDE, *Chairman.*

cc: Hon. John Conyers, Jr.

QUESTIONS FOR ASSISTANT ATTORNEY GENERAL KLEIN AND GENERAL COUNSEL MCFADDEN

QUESTIONS FROM CHAIRMAN HYDE

1. At the hearing, I asked when I would receive a reply to the letter that Congressman Jesse Jackson, Jr. and I sent to you and other Administration officials on October 1, 1997 about airport issues in Chicago. I was told that I would receive an answer within the next few weeks. Today, two months after that representation and almost ten months after the letter was sent, we have not received a reply. I repeat my question from the hearing: When can we expect an answer to our letter?

2. Currently, there is extensive litigation in state court in the Dallas, Texas area concerning what is known as the Shelby Amendment. Department of Transportation and Related Agencies Appropriations Act of 1998, Pub. L. No. 105–66, 111 Stat. 1425, 1447, § 337 (October 27, 1997). The Shelby Amendment loosened some restrictions on the use of Love Field in Dallas. However, to date this litigation has frustrated the purposes of the Shelby Amendment. Does this litigation implicate the federal interest in the freedom of interstate commerce? Does this litigation implicate the federal interest in antitrust policy? If so, are these substantial federal interests being adequately protected in this litigation? Is this an appropriate case for federal government intervention in a state court action?

3. Over the past several years, the major air carriers have cut the commissions that they pay to independent travel agents. In addition, I am informed that these same carriers compete against the independent travel agents through their ownership of Scheduled Airlines Traffic Offices, Inc. ("SATO"). I am also informed that the airlines may give preferential treatment to SATO. Does the cutting of travel agent commissions coupled with preferential treatment for SATO raise any antitrust concerns? If so, what are those concerns? Are there any regulations that govern this type of conduct? Also, I understand that the federal government is one of the primary customers of SATO. Is the government getting its money's worth in this relationship?

U.S. DEPARTMENT OF TRANSPORTATION,
GENERAL COUNSEL,
Washington, DC, September 29, 1998.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I appreciated the opportunity to appear May 19 before your Committee on behalf of the Department of Transportation to address issues of consolidation in the airline industry.

I would like to respond to your July 21, 1998, letter seeking responses from me and Assistant Attorney General Joel Klein following our May 19 appearances. My response on behalf of the Department of Transportation is enclosed.

I would also like to express the Department's appreciation for the Committee's willingness to hold hearings and explore the complex issues involved in consolidations in the transportation and other industries.

Sincerely,

NANCY E. MCFADDEN

Enclosure

QUESTIONS FOR ASSISTANT ATTORNEY GENERAL KLEIN AND GENERAL COUNSEL MCFADDEN

QUESTIONS FROM CHAIRMAN HYDE

Question 1

At the hearing, I asked when I would receive a reply to the letter that Congressman Jesse Jackson, Jr. and I sent to you and other Administration officials on October 1, 1997 about airport issues in Chicago. I was told that I would receive an answer within the next few weeks. Today, two months after that representation and almost ten months after the letter was sent, we have not received a reply. I repeat my question from the hearing: When can we expect an answer to our letter?

Answer

Mr. Chairman, I regret that the consolidated response to the letter from you and Representative Jackson has taken so long. Your letter did raise many complex, interrelated issues involving the jurisdictions of five different organizations. I am pleased to be able to say that Secretary Slater recently provided our consolidated response to you. We intend to act more quickly on the follow-up letters of July 2 and July 6 from you and Representative Jackson.

Question 2

Currently there is extensive litigation in the state courts in the Dallas, Texas, area concerning what is known as the Shelby Amendment, Department of Transportation and Related Agencies Appropriations Act of 1998, Pub. L. No. 105–66, 111 Stat. 1425, 1447 (October 27, 1997). The Shelby Amendment loosened some restrictions on the use of Love Field in Dallas. However, to date this litigation has frustrated the purposes of the Shelby Amendment. Does this litigation implicate the federal interest in the freedom of interstate commerce? Does this litigation implicate the federal interest in antitrust policy? If so, are these substantial federal interests being adequately protected in this litigation? Is this an appropriate case for federal government intervention in a state court action?

Answer

The Shelby Amendment changed the previous federal statutory restrictions on Love Field service in two respects: (i) it added three states—Kansas, Mississippi, and Alabama—to the original five-state area within which flights from Love Field could be operated with large aircraft, and (ii) it allows airlines to operate longhaul flights to any point in the country with aircraft with a capacity of no more than 56 passengers, including some reconfigured large aircraft that were originally designed to hold more than 56 seats.

The Shelby Amendment immediately generated disputes over whether airlines may operate the additional types of service permitted by that statute. Before the President had even signed the legislation, the City of Fort Worth filed a suit in state court against the City of Dallas, Legend Airlines (a firm that plans to begin operating flights from Love Field next year with reconfigured large aircraft), and others to block additional service at Love Field. The City of Dallas filed its own lawsuit in the federal district court in Dallas against Fort Worth and this Department seeking that court's determination on the scope of Dallas' authority to limit service at Love Field. Continental Airlines, Continental Express, and Southwest Airlines have also sought relief from the federal district court in Dallas.

The federal government does have substantial interests in the federal law issues raised by the litigation in the state and federal courts in Texas. We agree that we should resolve the existing dispute over proposals for expanded Love Field service so that airlines can operate the services authorized by federal law. We have therefore begun a Departmental proceeding that will obtain the parties' comments on the relevant federal law issues, including the question of how far a city acting as an airport proprietor may restrict airline operations at the airports that it owns. After we receive the parties' comments, we plan to issue a final order ruling on the federal law issues. In addition to this action, the Department has already amended the operating authority of all U.S. airlines to reflect the changes made by the Shelby Amendment. We are also processing Legend Airlines' application for certificate authority allowing it to begin operations at Love Field.

The federal government will also assert its interests in the pending suit filed by Dallas. However, intervention in a state court suit like the suit filed by Fort Worth is not usually an effective method for protecting the federal government's interests, in the Department's experience.

The resolution of the dispute should largely depend on the interpretation of the existing federal statutory provisions governing airline service and airport operations, although the Department recognizes that the litigation's outcome could significantly affect airline competition in the Dallas-Fort Worth area.

Ouestion 3

Over the past several years, the major air carriers have cut the commissions that they pay to independent travel agents. In addition, I am informed that these same carriers compete against the independent travel agents through their ownership of Scheduled Airlines Traffic Offices, Inc. ("SATO"). I am also informed that the airlines may give preferential treatment to SATO. Does the cutting of travel agent commissions coupled with preferential treatment for SATO raise any antitrust concerns. If so, what are those concerns? Are there any regulations that govern this type of conduct? Also, I understand that the federal government is one of the primary customers of SATO. Is the government getting its money's worth in this relationship?

Answer

In the past this Department has taken the position that it does not have the authority to regulate the commissions paid by airlines to their agents or to prohibit favoritism by an airline with respect to any particular agency, except when an airline's commission practices constitute an unfair method of competition in the provision of air transportation to consumers that may be prohibited by the Department. The antitrust implications of the relationship between the airline owners of SATO (Scheduled Airline Ticket Offices) and the operations of SATO would be subject to review by the Antitrust Division of the Department of Justice.

With respect to Federal government contracts with SATO, our understanding is that each Federal agency (or perhaps element of an agency, e.g., a military base) has the authority to negotiate contracts for travel services with travel agencies. DOT's contract is not with SATO so we cannot comment on whether the Federal "government is getting its money's worth" in its relationship with SATO.

TESTIMONY OF CONGRESSMAN CHARLES E. SCHUMER ON THE AIRLINE COMPETITION AND LOWER FARES ACT BEFORE THE HOUSE JUDICIARY COMMITTEE

MAY 19, 1998

Media Contact:
Cathie Levine
(202) 225-6616

Chairman Hyde, members of the committee, thank you very much for the opportunity to submit my remarks before you today. I am delighted that you are examining the state of airline competition, and that you are considering legislation to address some of the serious problems in this area.

I introduced the Airline Competition and Lower Fares Act (H.R. 3160), comprehensive legislation that tackles the same problems. The bill, which is cosponsored by a number of my New York colleagues, is very similar to Senator John McCain's legislation.

I would like to outline three key components of this strong legislation which ought to be included in any bill the committee approves. First, I will briefly discuss the problem and the recent Department of Transportation (DOT) guidelines.

THE PROBLEM

I think everyone here agrees that our national aviation system has improved dramatically since airline deregulation 20 years ago. We do not want to do anything that puts that success at risk.

Nonetheless, some areas—like Upstate New York—are still waiting for the lower fares and greater choices that the rest of the country takes for granted.

In these areas, competition has not increased, but prices have. LaGuardia Airport in New York City has airfares 35% above average, largely because of a federal regulation that constricts competition. The problem is far worse in the rest of the state. Rochester and Buffalo, for example, consistently rate among the five most expensive in DOT studies of large airports. The fare from the Capitol in Washington, DC to the Capital in Albany, New York is as high as $768—more expensive than many tickets to capitals like London, Paris, and Rome.

These sky-high airfares cost New York money, and they cost New York jobs. Businesses relocate or expand elsewhere because travel costs from our New York cities are high. For example, airfares were a major reason that Kodak, the largest employer in Rochester, relocated high-paying sales positions to Atlanta.

We need action, and we need it right away. This committee is meeting just in time.

DOT GUIDELINES: A FIRST STEP

The DOT has recognized this need, and has responded with important guidelines to help define the parameters of fair competition. The guidelines, as the committee knows, define unfair practices such as "capacity dumping." That's where an established airline challenges a new low-fare competitor by sharply increasing the number of flights on the same route. Each airline flies with many unfilled seats—losing money—but the bigger carrier is better able to withstand the losses. Once the smaller airline is forced off the route, the schedule returns to normal, while fares go back to their original level or even higher.

Far from hampering the market, clear rules will enhance it. By drawing a line between good old-fashioned competition and dirty tricks, the proposed rule will establish legal certainty for all airlines, and protect consumers from practices that drive up fares.

DOT's proposed rule is a step in the right direction, but it is only a first step and only a baby step. Many problems remain, which require action now.

I urge the committee to include the ideas in the Airline Competition and Lower Fares Act as a central part of any legislation to reinvigorate airline competition. In particular, I would like to point out three aspects of our proposal.

REFORMING THE SLOT RULE

The High Density Rule, or "slot rule," limits access to four of the most crowded airports in the country—LaGuardia and JFK in New York, O'Hare in Chicago, and

Reagan National in Washington. Under the slot rule, every flight must have an assigned takeoff and landing "slot" at these four airports.

In the last decade, a few airlines have radically increased their concentration of slots at the four airports, squeezing out new entrants. By limiting competition, the slot rule drives up fares throughout the northeast and upper Midwest. Airlines that do not control slots can't get the toehold they need to provide service in the region's other cities.

So far, DOT has addressed this problem in the worst possible way. First last fall, and again this spring, DOT crammed a few extra slots into the already crowded airports. This "exemption" policy is short-sighted and short-lived. Adding a tiny number of slots at the margins does little to increase competition. But it does a lot to exacerbate other problems at these airports, like noise, pollution, ground traffic, and delays.

This strategy has done very little to promote competition. In the future, it will do even less. Simply put, there is no more juice to be squeezed from this orange. There is virtually no room left to insert even one more slot. Obviously, this will not work as a long-term solution to promote competition.

Instead, I urge the committee to consider the auction language in H.R. 3160, which is similar to Senator McCain's auction proposal. Our bill would withdraw a limited number of slots from airlines with very high concentrations, and auction them off to carriers with few or no slots. We have added new provisions beyond Sen. McCain's bill that will protect service to other cities with problems of high fares or few flights.

Some have tried to label this idea as so-called "deregulation," but that epithet simply doesn't fit. The slot rule is a rule. It's a regulation. It already exists. My plan simply adjusts this rule to *promote* market forces, not curtail them. In fact, a limited withdrawal and auction is the opposite of "deregulation"—it's reform.

If we are serious about promoting airline competition in New York and throughout the northwestern quadrant of the country, then true reform of the slot rule is the linchpin. Tinkering is not enough, and it makes other problems worse.

TIMELY ACTION ON COMPLAINTS

Second, while the DOT's new rules to define unfair competition are excellent, it is not enough simply to have rules alone. The rules must be enforced, and that is DOT's responsibility. DOT must be an active umpire. Without its strong involvement, open competition cannot be maintained.

Currently, the Department takes far too long to respond to a complaint of predatory practices. It is little solace for executives at a small airline for DOT to declare their complaint valid if they have already been driven out of business by unfair competition.

My bill has specific timetables for DOT to follow when handling complaints alleging predatory practices like capacity dumping. There is nothing magic about the dates I set forth, and the committee may choose a different schedule. Nonetheless, it is important to have some deadlines for action. Otherwise, DOT will constantly be like the doctor who says, "the therapy worked, but the patient is dead."

CLEARER AIRLINE LIABILITY

Finally, H.R. 3160 would clarify that airlines are accountable for the same types of legal responsibilities as every other business. Airlines should not be immune from proceedings in state courts on issues like contracts or torts. But some recent court decisions have done just that, establishing an interpretation of the Airline Deregulation Act that goes far beyond the intent of Congress.

For deregulation to work, we must avoid a patchwork of state laws, regulations, and court decisions. No one wants to see state law meddling in fares, service, or routes. That's why Congress exempted airlines from certain types of state law in the first place.

But that's entirely different from immunizing all airlines from all activities in all state courts. My proposed language simply adds a sentence to the Airline Deregulation Act to make it clear that airlines should not be hassled by state regulations, but they should not be above the law either.

Consumers, travel agents, and other airlines all have legitimate concerns about some carriers that have nothing to do with the issues covered under deregulation. They deserve their day in court. That's why this provision has been endorsed by the Consumer Federation of America and the American Society of Travel Agents.

CONCLUSION

I strongly urge the committee to give strong consideration to these three proposals. There are other good ideas to explore, and I know you will hear those, but these three should form the foundation. It is also possible that the best approach may be to direct DOT to enter into rulemaking on some of these matters, rather than getting bogged down in statutory language. While not ideal, rulemaking is clearly better than no action.

In any case, the greatest imperative is that the committee take action right away. Sky-high airfares are an urgent crisis. I am pleased that they are a priority for the committee for this year.

THE ALLIANCE OF RESIDENTS
CONCERNING O'HARE, INC.,
Arlington Heights, IL, April 28, 1998.

Hon. BILL CLINTON, *President,*
Attn. Mr. Erskine B. Bowles, COS,
The White House, Washington, DC.

Hon. HENRY J. HYDE, *U.S. Congressman,*
Attn: Mr. Joseph Gibson,
House of Representatives, Washington, DC.

Hon. CAROL MOSELEY-BRAUN, *U.S. Senator,*
Chicago, IL.

Hon. RICHARD DURBIN, *U.S. Senator,*
Chicago, IL.

Hon. JOHN PORTER, *U.S. Congressman,*
Attn. Mr. Edward P. Kelley,
Deerfield, IL.

Hon. BUD SHUSTER, *,Chairman*
and Committee Members,
Committee on Transportation & Infrastructure,
House of Representatives, Washington, DC.

Hon. JOHN J. DUNCAN, *,Chairman*
and Committee Members,
Committee on Aviation,
House of Representatives, Washington, DC.

Hon. JIM EDGAR, *Governor,*
State of Illinois
Attn. Mr. Tom Livingston
Springfield, IL.

Hon. PETER FITZGERALD,
State Senator,
Palatine, IL.

Hon. ROBERT BERGMAN,
State Representative,
Palatine, IL.

Hon. RODNEY SLATER, *Secretary,*
Department of Transportation,
Washington, DC.

Hon. JANET RENO, *Attorney General,*
U.S. Department of Justice,
Washington, DC.

Hon. CAROL BROWNER, *Administrator,*
U.S. Environmental Protection Agency,
Washington, DC.

Hon. JANE GARVEY, *Administrator,*
Federal Aviation Administration,
Washington, DC.

Hon. KATHLEEN A. MCGINTY, *Chairperson,*
Counsil on Environmental Quality,
Washington, DC.

DEAR PRESIDENT CLINTON, CONGRESSMAN HYDE, CONGRESSMAN PORTER, CHAIRMAN SHUSTER, CHAIRMAN DUNCAN, GOVERNOR EDGAR, SENATOR FITZGERALD, REP-

RESENTATIVE BERGMAN, SECRETARY SLATER, ATTORNEY GENERAL RENO, ADMINISTRATOR BROWNER, ADMINISTRATOR GARVEY AND CHAIRPERSON MCGINTY: The addition of 53 more daily slot exemptions, approximated 20,000 annual take-offs and landings, recently added to Chicago O'Hare International Airport by the U.S. Department of Transportation is an insult to the millions of citizens in the Chicago Metroplex area whose health, safety and quality of life will be affected. This is over and above the 10 slots, 7,300 landings and take-offs, added within the last few months and given to Reno Air and Trans State Airlines.

These are new slot exemptions, not available as a result of the removal of military operations from O'Hare. It could be argued that the first round of exemptions, the 10, resulted from the military move, but the military never really had any slots, since most military flights were flown during the night, not during slot allotted hours.

Adding extra traffic, even one more flight a day, at historically the world's busiest airport will add more undue life threatening air, water and noise pollution and further endanger up to one-quarter of the state's population. Just a one-percent increase in operations adds upwards of 9,000 flights annually. What this means for the residents living around O'Hare is that they are exposed to at least double the levels of daily criteria and toxic air pollution as other residents of the region located some distance from the airport sources. Area residents already suffer from immense amounts of ground vehicle traffic pollution. O'Hare is one of the busiest ground traffic sites in Illinois, if not the world, with close to 200,000 cars and trucks entering and leaving the airport daily. Clearly airport maintenance, private and commercial vehicles and facilities on and off-site are not incidental to operations. They are part of the process, part of the problem!

As evidenced elsewhere, O'Hare Airport operations and aircraft pollution pose serious public health risks for possibly millions of citizens living around the airport as pollution does not stop at the end of the airport's boundary, but is also discharged overhead. These added flights and their collateral operations increase the devastating effects of airport and aviation related noise, air, water pollution, property losses to people, their safety and our environment.

Therefore, adding any more aviation related problems which will make matters worse and since decades of industry fixes have not worked, we demand that any and all expansion of the airport and operational increases be immediately curtailed and an environmental assessment completed and controls put into place to provide permanent, meaning relief.

Further, if low carrier access into the Chicago market to add competitiveness to the market was really the purpose for adding more slots, it would be best served by adding another airport, not giving O'Hare's United and American Airlines regional operators the largest share of the new slots. If competition was really the focus, it is completed out of focus. At a recent pubic meeting, Mr. Bill Hood, American Airlines Vice-president of corporate affairs stated, "We have competition between airports not between airlines." Does he mean that Midway competes with O'Hare but that United and American do not compete?

Competitiveness is not achieved in the allocation, since most of the carriers are subsidiary to United and American Air Lines thereby further entrenching the dominance of those carriers at O'Hare. None of the exemptions were assigned to communities in the Midwest, Michigan, Indiana, Illinois or Wisconsin. Many of those communities have lost some or all of their O'Hare service due to the conversion of commuter slots by United and American Air Lines to longer haul markets with larger aircraft.

Additionally, many, including legislators are confused regarding the "slot rule", thinking that it limits the number of take-offs and landings to 155 per hour. It does not, the hourly number is frequently exceeded during high traffic periods. The High Density Rule governing slots was established to address congestion and delays. Further, adding new slots will increase flight delays.

In consideration of public health, we demand these dangerous and even life-threatening environmental impacts be strongly regulated and enforced. To protect the public and our environment, any increase in operations should command an Environmental Impact Statement and enforcement of laws regarding air pollution and antitrust.

Sincerely,

JACK SAPORITO, *Executive director.*

c: J. Clark

STATEMENT FOR THE RECORD OF GERALD J. ROPER, PRESIDENT & CEO, CHICAGOLAND CHAMBER OF COMMERCE

The Chicagoland Chamber of Commerce represents over 2,400 member firms and the over one-million individuals that they employ. Our members rely on leaders at all levels of government to help create and support public policies that will maintain the Chicagoland region so that it is attractive and productive for current and potential employers, tourists and residents. Our mission is ". . . to make Chicagoland the most business-friendly region in America".

In the debate over anti-trust theory, airport slot availability and air service competition, it is important that we not lose sight of the forest for the trees. By almost any objective criterion that can be applied, the U.S. enjoys an air transportation system that is the most efficient, effective and competitive in the world. Within the U.S., no major city enjoys an air transportation system as extensive and beneficial as Chicago's.

Chicago has two major airports: Midway and O'Hare. In addition, the region is also served by airports in Milwaukee, Wisconsin, Rockford, Illinois and Gary, Indiana. The most convenient of these in terms of proximity to Chicago's downtown business center is Midway.

Unconstrained by slot limitations, Midway has developed into the region's center for point-to-point, low fare service. With non-stop service from Chicago's Midway to 57 airports across the nation, and with almost 270,000 landings and take-offs per year, Midway offers a better pattern of service than is available from the primary airports of all but a few U.S. cities.

Moreover, Chicago is in the midst of a massive renovation project at Midway Airport that will expand concourse and terminal space by over 250% and increase the number of gates by 35%. These renovations will ensure that Midway remains the premier, low-fare, point-to-point airport in the world, with capacity to handle any carrier wishing to serve our communities.

O'Hare International Airport is, without question, the world's premier network hub airport. With non-stop service to 189 airports world-wide and with both American Airlines and United Airlines using the facility as a principal hub for their networks, Chicago is one of the very few cities that enjoys the fruits of the fierce competition between two major hub operators. Not surprisingly this has resulted in fares from O'Hare that are well below comparable fares from most other major hub cities.

With Midway and O'Hare, Chicago enjoys the very best of two systems: Midway offers ready access to the point-to-point services of carriers such as Southwest and American Trans Air; O'Hare provides access to the network systems of carriers such as United and American which hub at O'Hare. Additionally, many argue that because of Midway's proximity to the city center, the low-fare services there are providing price discipline for destinations also available from O'Hare.

A recent study conducted by the American Express Domestic Airfare Index indicated that Chicago offers service to more of the country's top destinations than any other airport. The Index demonstrated that Chicago was able to hold this unparalleled level of service while only seeing a four percent increase in the average airfare. Cities like Los Angeles, New York, Minneapolis, Boston and Washington, D.C. all experienced much greater average fare increases.

Because of the major competition within O'Hare from the over 70 carriers operating there and the subsequent competition from carriers operating to those same destinations from Midway, the average one-way fare paid by Chicago region passengers at O'Hare declined by 11.93% between 1990 and 1995, a period during which the consumer price index increased by 17.21%. The competitive environment fostered by the Chicago Department of Aviation and its airport policies, and made possible by airline deregulation, ensures that benefits such as this continue to be produced for the citizens and businesses in our region. Current competition is good for the businesses and communities of Chicagoland and good for airline consumers throughout the U.S. and the world.

As the chamber of commerce for the Metropolitan region we need to promote all services which function as economic development tools and draw business and commerce to our region. The Chicago Airport System and the access it provides serves as one of our strongest selling points. Combined O'Hare and Midway offer non-stop service to over 200 destinations worldwide. O'Hare supports an estimated 400,000 jobs and has an annual economic impact of over $27 billion. Midway provides an impact of $4 billion annually and supports 60,000 jobs. Combined these airports contribute over $30 billion annually to our regional economy and they do it while being self-supporting and without the use of taxpayer dollars.

With the proven economic engine of the Chicago Airport System, what is the logic of building a third regional airport without a private investor or prospective tenant. Why should the business community support an idea that will threaten our region's economic vitality? Not to mention devastate and possibly close Midway Airport. The Chicagoland Chamber of Commerce is committed to promoting the Chicago Airport System and protecting the access and opportunity that it provides.

STATEMENT OF CAROL B. HALLETT, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AIR TRANSPORT ASSOCIATION OF AMERICA

Mr. Chairman and Members of the Committee, I am Carol B. Hallett, President and Chief Executive Officer of the Air Transport Association of America (ATA). ATA represents the airlines that provide over 95% of all the airline passenger transportation in this country.

We take this opportunity to present our views on a particular issue within the larger subject of airline competition. That issue is the new proposed policy issued by the Department of Transportation last month, entitled "Statement of Enforcement Policy Regarding Unfair Exclusionary Conduct".

There is no question that the economic deregulation of the airline industry has been a boon to consumers and to the economy at large. Competition and the free-market determination of fares, schedules, and routes have produced enormous efficiencies and savings for consumers. In the twenty years since the adoption of the Airline Deregulation Act, average fares paid by passengers in this country have dropped 36% in real terms, and the number of passengers flying has more than doubled. The domestic airline industry is widely acknowledged to be one of the most fiercely competitive industries in our economy. And the consumer has been the winner.

In the face of this demonstrated success, the Department of Transportation has recently proposed a new approach to government involvement in airline pricing and scheduling, matters which go to the heart of deregulation and the benefits consumers have derived from deregulation. The stated objective of this new approach is to deter predatory behavior—or "unfair exclusionary conduct", as DOT prefers to call it—by some airlines at the expense of others.

This proposed policy has as its clear purpose the creation by the Department of Transportation of a separate and unique standard of predation which would apply only to the airline industry and which would be substantially different from the standard of predation applied under anti-trust law and precedent to all other industries. The novel euphemism "unfair exclusionary conduct" is used in the proposed policy in place of the commonly accepted term "predation" as a way of sidestepping the fact that under existing law it is the Department of Justice, not the Department of Transportation, which has responsibility for enforcement against predatory behavior and it is the anti-trust law standard of predation, not a new and different standard invented by the Department of Transportation, which governs.

Unfortunately, the result of this proposed policy, however unintended, will be to raise average fares paid by consumers. Most airlines, fearful of enforcement action under this proposed policy, will not be willing to discount fares as much as they do today, and will not be willing to offer as many seats at the lower fares. The result will be that those passengers most reliant on the availability of low fares will be harmed, as fares will be less discounted and less available to them.

This is of particular concern to us because it is from precisely this segment of the market that the majority of our growth under deregulation has come. Our member airlines have dramatically expanded the number of passengers who choose to fly because we have found ways to lower the fares available to more people. We have built our expanded airline systems—including expanded employment, increased investment in airport facilities and in aircraft, and service to many communities we could not serve at reduced levels of passenger demand—all based on our ability to expand the number of people who fly by attracting them with discounted fares. That is what is at risk with a policy which now threatens to forbid the price-discounting behavior that deregulation was intended to encourage and that has provided most of the consumer benefits of deregulation.

At its core, this proposed policy must be understood as a government action which would deter major airlines from offering discount fares in some circumstances where they offer them now, and from offering as many seats at the lower fares as they do today, *even where such airline practices today do not violate anti-trust laws with respect to predation*. That would be a momentous step for the government to take, with negative consequences to consumers which would be direct and immediate, and with claimed benefits to consumers which are at best speculative and feeble and which are more likely a mirage.

Is this new proposed policy necessary to root out any predatory behavior in the airline industry? Of course not. We believe that it will chill a great deal of legitimate pro-consumer price discounting as an unintended side effect. This would be the wrong medicine, prescribed without authority that would ultimately inflict grievous harm on the patient.

Predation in any industry, including the airline industry, has long been prohibited by antitrust law, but through long experience we as a nation have learned that it takes great care to distinguish between predatory price-cutting which harms consumers and legitimate competitive price-cutting which greatly benefits consumers. In this proposed policy, DOT has invented a new standard for the airline industry only, and it is a new standard which does not carefully distinguish predatory price-cutting from legitimate competitive price-cutting. The perverse result would be that under this new proposed policy airlines would be deterred from much of the legitimate price-discounting they do today, producing in turn higher average fares to consumers, particularly to those consumers who are most price-sensitive and who therefore are most dependent on the lower fares.

Ironically, of the few examples of ostensible predatory behavior, which DOT cites as justification for its proposed policy, not once does it argue that any alleged example of predatory behavior could not be reached under existing anti-trust law. Nowhere does it make the case that there is predatory behavior occurring which should be attacked but cannot be attacked under anti-trust prohibitions. Why are we inventing a new predatory standard, which jeopardizes legitimate pro-consumer price discounting, when we have not demonstrated that the existing anti-trust standard is insufficient?

In defense of its new proposed policy, DOT has argued at various times that the new policy

- pro-consumer;
- not re-regulatory;
- just "guidelines" to clarify existing prohibitions, not to create new ones;
- the application to airlines of the same basic standards applicable to all industries; and designed to protect competition, not any group of competitors.

If the proposed policy were in fact as it is described above, we would have no objection to it. However, with respect to every point, the content of the policy is the opposite of the description of the policy by DOT. The policy is:

- not pro-consumer because it will result in higher average fares, and in particular because it will increase the more discounted fares and reduce their availability;
- it is re-regulatory because it creates new government restrictions on market-based pricing and schedule decisions, which are at the very heart of economic regulation;
- it is not just clarifying guidelines, both because it is less clear than existing anti-trust prohibitions against predatory behavior and because it prohibits behaviors which are not prohibited by existing anti-trust law;
- it clearly sets a new standard on predation which would apply only to the airline industry and not to other industries; and it clearly protects a specific group of competitors—which it defines as "low-cost carriers" that have been in business for less than 10 years—and it specifically protects them from coverage of these guidelines while covering all other airlines. No existing prohibition on predatory behavior admits on its face that it will be applied to one group of competitors and not to another, yet that is exactly what this policy would do. Why should this class of airlines enjoy the benefits of a regulatory shield from the rigors of the marketplace? Is it a physical impossibility that juvenile budget airlines would ever engage in "unfair exclusionary practices" against each other? Or against a major carrier? Or that any carrier would do so against a budget carrier over 10 years old? DOT never answers these questions, but it is quite clear that whatever protection they think they are providing, they are providing it only for one group of competitors. These basic questions need to be answered because the Supreme Court has repeatedly stated that the purpose of the antitrust laws is to protect *competition* not *competitors*.

Let us take a moment to consider how this policy would work in practice.

What we as a nation wanted from deregulation was a competitive environment where no competitor felt so secure that they could ignore the threat or the reality of the competitive moves of another airline. If an existing airline lowers fares, the consumer is better off if the other carriers in that market also lower theirs. The consumer wants an environment so competitive that no competitor feels above the fray. All airlines not only feel they have to respond to the competitive moves of others, but that they have to do so immediately. And the result of this instantaneous responsiveness is that consumers have more choices at the lower prices.

So the public interest wants carriers to feel the need to make competitive responses and to make them fast.

Under existing anti-trust prohibitions on predatory pricing, a carrier faced with a price-cut by a competitor knows that so long as it does not reduce its prices below the cost of providing that capacity, it will be on the right side of the prohibition against predation. While not a perfectly clear standard (since there can always be slight disagreements over the method of computation of the costs), it is a relatively clear standard that allows the carrier to proceed rapidly with price reductions up to that line. And in fact carriers have generally known where that line was and have therefore not crossed it. It works by deterrence more than by prosecution or litigation.

Under the DOT's new proposed policy, however, a carrier faced with a price move by a competitor would, before it could respond, have to determine that its response was not "a strategy of price cuts or capacity increases, or both, that either (1) causes it to forego more revenue than all of the new entrant's capacity would have diverted from it or (2) results in substantially lower operating profits—or greater operating losses—in the short run than would a reasonable alternative strategy for competing with the new entrant."

How does an airline marketing person know, based on that language, what he or she can do and what he cannot?

Under (2), how does he know what "reasonable alternative strategy" someone at DOT would select, out of the virtually infinite array of possible fares, fare rules, yield management factors, frequent flier offers, etc. that could make up the elements of a normal (and legal) competitive response? If he cannot predict what "reasonable alternative strategy" DOT would select, sitting as a shadow marketer for that airline, then he cannot compare the revenue diversion he would experience under the selected response (if only he could know for sure what the revenue diversion of his selected response was) to the revenue loss of the "reasonable alternative strategy" selected for him, at a date sometime in the future, by someone at DOT. And if he cannot make that comparison, he has no way of knowing whether he is in compliance with (2).

Under (1), how does he know how much revenue the new entrant's service and fare will divert as opposed to how much they will generate in new traffic, which DOT acknowledges is the usual result when a lower fare is offered? Is he supposed to wait weeks or months before making any competitive response, so that he can measure how much diversion he is suffering? Should he be forced to wait that long to make a competitive response even if the competitive move he would have made would have been entirely legal? Won't both his airline and consumers generally have been harmed by his inability to make his legal competitive response earlier?

What we have here is an airline marketer who either cannot make a competitive response at all, or who has to make a response so timid that he will come nowhere near the invisible line of impermissibility which may later be drawn out of the broad ocean of policy statement vagueness. Thus, under this policy not only will the competitive responses which are legal under antitrust law, but deemed undesirable by DOT, be deterred, but so will a wide margin of competitive responses which DOT does not intend to deter but which airline marketers cannot possibly determine in advance whether DOT would later find them permissible or not.

This policy will not only result in higher *low* fares, and fewer seats at those fares, by major airlines, but it will also reduce the incentive for low-cost airlines under 10 years old to offer fares as low as they do today. The ultimate irony of DOT's policy will thus be that they will not need to do so to distinguish themselves from the major carriers.

The core problem in the DOT approach in the proposed policy, as compared to the Department of Justice approach under anti-trust laws, is that DOT attempts to tell airline marketers what they can and cannot do based on concepts of revenue diversion which might be understood by an academic economist well after the fact, but which cannot possibly provide any guidance to a marketer at the time at which he has to make a decision about which competitive response to make. Justice and the antitrust laws give marketers a handy on-the-spot cost-based guideline they can use. While no guideline is perfect, traditional antitrust jurisprudence gives the marketer something he can use because he can know the costs of his own company. A revenue diversion-based test requires him to know things he simply cannot know—about his competitor's passengers and about what someone at DOT would select later on as the "reasonable alternative response" which the marketer presumably should have selected.

Once DOT adopted the revenue diversion-based approach, it had to provide a "reasonable alternative response" test, because the simple fact of revenue diversion in a competitive response does not raise issues of consumer harm. In fact, quite the contrary: the purpose of competition policy is to lower consumer prices, not to maximize airline profits. In a competitive response, airlines should make less revenue because they should be lowering the prices to consumers—that is the public benefit in competition. So DOT had to provide for a "reasonable alternative response", which would also divert revenue, but which would provide some measure of how much revenue diversion is good and how much is too much.

However, once you have a "reasonable alternative test" you have created a test which the marketer cannot possibly determine at the time he has to select his competitive response, and you have installed a DOT employee as the shadow marketer of every major airline, effectively determining what fares, fare rules, yield management practices, capacity decisions, and other incentives awards each airline should adopt. If that is not reregulation, what is? Indeed, it is a more pernicious form of regulation than Congress eliminated in the Airline Deregulation Act of 1978 because of its "Monday morning quarterbacking".

The DOT's proposed revenue diversion-based predation policy would in specific circumstances:

- forbid an airline from matching the fare of its competitor;
- forbid an airline from reducing its fares to a level above its competitor's and above the costs of providing the service;
- forbid a carrier from charging a fare below its competitor's but above it's own costs. (This would most frequently be a problem for adult low-cost carriers.);
- forbid an airline from significantly expanding the number of its existing seats it offered at its existing lowest fare; and
- forbid airlines from significantly expanding the frequent flier miles it awarded for a particular route.

It is not enough for the DOT to say that, while such actions by an airline might in specific circumstances violate its policy, DOT would not in practice, after evaluating the situation, elect to prosecute such violations. Prosecutorial discretion has its place in many kinds of enforcement situations, but in predation it can have a profoundly anti-consumer effect, because the main effect of predation policy is deterrence. Practices forbidden or threatened by a predation policy for the most part will simply not be engaged in by airlines, so DOT will not have the opportunity to weed out later those practices which are technically forbidden by their policy but which on further reflection are clearly pro-consumer and legitimate. There will be, after the fact, nothing to reflect on. The consumer will have been denied an enormous amount of legitimate and proconsumer price-cutting, which, if it had occurred, DOT would have later chosen not to prosecute.

This is why years of anti-trust practice have led our country to a cost-based standard for predation—anything else will chill more legitimate price-cutting than it will prevent predation. As the Supreme Court stated in 1994, "As a general rule, the exclusionary effect of prices above a relevant measure of cost either reflects the lower cost structure of the alleged predator and so represents competition on the merits, or is beyond the practical ability of a judicial tribunal to control *without courting intolerable risks of chilling legitimate price-cutting.*" [emphasis added] 509 U.S. at 223.

Experts in competition policy and anti-trust law, certainly including this Committee, have long held that various federal agencies should not make their own anti-trust policies for their own industries, because they simply do not have the experience necessary to reliably do the public more good than harm. This case could be Exhibit A in vindicating the wisdom of that view.

DOT's proposed policy may have been born of good intentions, but it has become a mass of unintended consequences. It would sharply restrict the ability of most of the airlines of this country to compete, it would restrict fare discounting, it would reduce the number of seats available at low fares, and it would deprive low-cost carriers of their incentive to also be low fare carriers. It would increase average fares paid by consumers, primarily by increasing the lower fares offered today. And it would dampen demand for air travel, threatening our employment levels, our investments in aircraft and facilities, and our ability to serve smaller communities.

DOT can describe this policy however it wants, but in the end what it does, rather than how it is described, will be what matters.

Finally, not only is this bad public policy, but it also has no basis in law. DOT cites 49 USC 41712 (the old Section 411 of the Federal Aviation Act) as its authority for adopting the new policy. DOT should recall how Section 411 came to be in today's statutes.

Section 411, which is entitled "Unfair and deceptive practices and unfair methods of competition", was repealed by the Airline Deregulation Act of 1978, effective January 1, 1985. As that date approached, Congress became concerned about that and wanted to retain Section 411. Ironically, DOT argued that it should be repealed. Congress ultimately passed the CAB Sunset Act of 1984, primarily for the purpose of preserving Section 411.

In so doing Congress had two primary motivations. First, it wanted anti-trust matters, including predation issues, in the domestic airline industry treated as they would be for any other industry. In the bill, Congress specifically provided that anti-trust and merger approval would transfer to the Department of Justice and that the retained Section 411 language would be the same language as applied (as Section 5 of the FTC Act) to every other industry.

Furthermore, the authors of the CAB Sunset Act were specifically asked to consider specifying a separate standard for predation in the airline industry, and considered doing so. On further examination, however, they concluded that in such an approach there was greater risk of harming consumers by chilling legitimate price discounting than there was benefit in barring any predation not already barred by anti-trust law. They therefore decided not to include any new standard for predation, and to retain instead language which specifically states that for purposes of all air commerce and safety statutes, "'predatory' means a practice that violates the anti-trust laws as defined in the first section of the Clayton Act (15 USC 12)." (49 USC 40102)

The second motivation, and the only respect in which Congress chose to treat these domestic airline industry issues differently, was that the Section 411 language was retained as a DOT authority, rather than as the Section 5 authority at FTC. The purpose had nothing to do with antitrust or with predation or with any other enforcement matter, but with formal rulemaking: Congress did not want rulemaking in the consumer protection arena to have to go through the Magnuson-Moss procedures at FTC, but it wanted the same words at DOT to mean what they meant at FTC.

So Congress in the 1984 Act sent the anti-trust jurisdiction over the domestic airline industry to Justice, specifically rejected a separate predation standard for the airline industry, retained in statute a definition of predation that specifies that it shall have in aviation law the same meaning as it does in the anti-trust statutes, and adopted for the airline industry the same language on unfair competitive practices as applies to every other industry. Based on all that, DOT now proposes a different standard for predation for the airline industry than applies under anti-trust law to every other industry.

This is beyond ironic. This is the weight of statute and legislative history that DOT attempts to sidestep by referring to its policy as being about "unfair exclusionary practices" rather than being about "predatory practices", when in fact predatory practices is what it is about. They can apply any label they want to it—they can even call it a "banana", as Alfred Kahn once did inflation—but it still is what it is, and the law says it means what the anti-trust laws say it means.

There is no question that in some respects—particularly consumer protection matters not addressed by anti-trust law, such as promulgating rules as to what constitutes adequate consumer notice of terms and conditions of travel—Section 411 was intended to be broader than the anti-trust statutes. But when it came to an issue central to anti-trust law, i.e. how we distinguish between predatory price cuts and legitimate, pro-consumer price cuts, Congress was not the least bit vague. It said very specifically and in statute, predation shall mean here what it means in the anti-trust statutes.

Thus, we have today a DOT proposed policy that would harm consumers, is utterly unworkable for those trying to abide by it, and is unsupported by law.

Mr. Chairman, we can and must do better than this. I will not engage in the debate among economists about whether predation is even possible or not. If the federal government believes it needs to be vigilant against the possibility of predation, I say let it be vigilant. But let it do so in a way that makes sense and does not harm consumers or discriminate among competitors or among industries. DOT should assist Justice in the enforcement of anti-trust laws, including prohibitions against predation, in the airline industry. If DOT believes greater clarification is needed of what is prohibited under the anti-trust law, let them clarify with Justice what existing anti-trust law prohibits. There should be no separate predation policies or standards for one industry or for one group of competitors within an industry.

Above all else, Mr. Chairman, don't harm our consumers. We depend on them, and so do those who depend on us. Thank you again for the opportunity to present our views on this important issue.

STATEMENT OF DARRYL JENKINS, DIRECTOR OF THE AVIATION INSTITUTE, THE GEORGE WASHINGTON UNIVERSITY

Recently I had the chance to read the testimony of those who opposed the proposed alliances in the airline industry. They were quite vocal in their opposition. However, none of the statements contained any analysis of why prices would go up and by how much.

I would like to begin this brief analysis with a simple declaration that I believe to be true. Prices are determined by factor outside of the control of the airlines and are set by forces of supply and demand.

As a life long observer of pricing, I can remember many fare hikes that were voted down by consumers. For example, two years ago the airlines tried to raise the benchmark fare. However, consumers voted this down and it did not go into affect. This same fare increase went through last fall.

Why does a fare get voted down one year and yet is approved by travelers the next?

The answers are simple. During the year, a very robust economy filled up planes to the point that they were over 70 percent full all of the time. This may not seem like much, but it is a historic figure and is the combination of two factors. For an airline to have a 70 percent plus load factor for one year, these planes will be essentially full during the rush hour with high loads all other times. It is called economic scarcity.

Economic scarcity is the driving force behind airline pricing right now.

First of all, the airlines are offering a greater amount of discounted seats than ever before. The second reason is that a very robust economy is putting disposable income into consumer's pockets. The attractive price combined with available income allows more consumers to fly. These high load factors have caused a rationing of last minute or walk up fares.

The only mechanism any business has to allocate scarce resources is price. So we see the lower leisure fares filling up the back of the airline and higher fares to those who book the last minute.

The point is that prices have to have a reason to go up or down. Prices are not set in the absence of economic reality.

There are simply too many alternatives to flying for anybody to consider it a necessity.

If flying for either business or leisure is not a necessity then economic forces will set the price. The current high load factors speak of the success of market conditions. If you are a business traveler you may not like paying the higher walk up fares, but the truth is if the airlines decreased these prices there would be no seats available in this economy.

What economic factors will cause prices to go up if these alliances go through?

Really there is only one. Prices will go up under these alliances if the airlines restrict capacity by a large factor causing load factors to go up even more.

Outside of this condition there are few economic reasons if any for prices to go up.

But there is one non-economic variable that could lead to higher prices—the recent proposal by DOT to re-regulate competition between major airlines and so-called low fare carriers.

DOT's proposals would make it difficult, if not impossible, for major airlines to respond to competition with the most fundamental strategy—lower prices. "We will not be undersold" is a basic rule of staying in business. Look at newspaper ads and, in business after business, you will see promises to meet or beat a competitors' price. In the guise of protecting a selected group of airlines, DOT wants to set aside that rule of the market.

But putting a floor under prices can mean only one thing for consumers—they will pay more than they should. The major airlines won't be able to cut prices—and the new low-fare carriers won't have to set their ticket prices as low to undersell.

And, DOT's proposal won't even keep new entrants from going out of business. New entrant airlines fail for the same reason as any business—bad service, mismanagement, flawed pricing, and inadequate financing among others. DOT can't change it. Nor should it.

Airline price regulation is a bad idea whose time is past.

And, it's a bad idea wherever it comes from. [As you've heard/will hear,] The Business Travel Coalition is also proposing a re-regulation scheme. It says fares should be based on mileage. That may sound reasonable at first blush. But if you look at the numbers, it will have three outcomes—bad, worse, and worst.

- *It will raise fares for average Americans.* Ninety percent of Americans typically receive discounted fares because they have the foresight to plan in advance and take advantage of the current fare structure. The BTC plan will put an end to that and put airline travel beyond the reach of many Americans.
- *It will reduce, and in some cases eliminate, airline seats now held in reserve for last minute business travelers.* Right now, airlines hold back seats to accommodate the business travelers' need for flexibility because of travel requirements that arise with little notice. If all fares are based on miles, airlines will simply fill the plane on a first come, first served basis. That means the business traveler who calls on Monday for a Tuesday flight will be told to take the car. This proposal hurts the very constituency if claims to serve.
- *It would effectively treat airlines as a utility*, imposing a form of regulation not even contemplated before 1978 and one that flies in the face of utility deregulation is every other industry. A government-mandated pricing structure that floats free of the market rules of supply and demand is something that every business person should oppose.

As we consider policy approaches to proposed alliances, we also must consider under what conditions would the airlines reduce the number of planes in the air in the domestic system.

Are there places in the international system where the domestic airlines could use smaller planes like the MD–80 or 737, which are the workhorses of the domestic system?

Not really. They do not have the range of capacity for international travel.

However, this is what must happen for prices to go up. Small airplanes will have to go out of the system and be used elsewhere.

This hardly passes with the airplane order books that have the domestic carriers purchasing the bulk of smaller airplanes.

Can these same small airplanes be used differently domestically?

There could be some reallocation.

However, if you were the airlines and were making the best profits in their history are there many incentives to change current conditions?

I do not believe so. It appears that the airlines would probably continue to keep things are they are.

At the margin I believe that there will be some consumer benefits from these alliances.

As a travel agent of more years than I wish to acknowledge I know that travelers want seamless travel.

Anybody who had ever had to recheck baggage during a flight knows the benefits.

I appreciate the opportunity to have given you my thoughts on this matter.

THE CITY OF
SAN ANGELO, TEXAS,
May 15, 1998.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: We are honored to have been asked to present the concerns of our community about air service before your committee.

San Angelo, Texas is a progressive business hub in central west Texas with a population of approximately 95,000. Our economy is based on agriculture, manufacturing, joint military training, telecommunications, education, recreation and retirement. Air transportation is especially vital to our economy, as we are not located on an interstate highway or on a major rail access route. We believe that it is noteworthy that we have invested significant amounts of local and federal funds in upgrading and maintaining a commercial airport to support air service for this community and this region. The FM is currently providing over $2,000,000 for increased runway length and capacity.

The community has been served by varied and numerous airlines before and after deregulation in 1978. Unfortunately, today only one commuter airline serves our community to and from Dallas/Ft. Worth. The most recent downturn in air service occurred in 1997 with the pullout of the other two commuter airlines serving the airport, one due to its major feeder airline restructuring to another large hub and the other due to bankruptcy.

With this decrease in service came increased airline ticket prices. Obviously we attribute this to lack of competition in the air service market place. Unrestricted airfares between San Angelo and D/FW have increased almost 40% in the last year, with corresponding increases to other destinations.

This high cost of air service has a multi-faceted detrimental effect on the people and the businesses of this region. First, it is readily apparent to us that the economy of our area is suffering and will continue to suffer. Corporations that currently exist in San Angelo and those that would possibly entertain San Angelo as a potential business site are paying exorbitant rates for air travel or suffering the inconvenience of highway travel to points of departure where travel is more economical. It affects our convention business by discouraging potential convention groups and adding to the cost of quality speakers.

Citizens from this area and visitors to San Angelo are forced to drive two to four hours to obtain economical air travel. This is especially true of families or groups with numbers where the drive becomes mandatory to afford the multi-person air fare to distant destinations. Over 58% of the air-traveling public from this region, or approximately 55,000 people, are forced onto the road by the lack of competitively priced air service to this community.

Citizens and businesses of this community do not believe that we are owed better air service. We do, however, believe that we warrant better air service. San Angelo has committed to a progressive philosophy and has dedicated financial assets toward maintaining the airport as a valuable link to bring prosperity to our community and region. Local citizens and businesses, who have dedicated their lives and assets to San Angelo, in return depend upon this community to provide them with adequate air service.

We fully realize that we are not in this position alone. We have followed closely the issue within other parts of the United States and have also joined with other small communities within the state of Texas to address the challenge. We plan to exploit successful ideas from other communities and pursue market-based solutions where possible.

We are also monitoring and providing comments on the many forms of legislation appearing before Congress in committee. Although we do not expect to return to regulation of the airline industry, we do support and appreciate the active interest by Congress on this critical issue, and promote any action, including incentives that would ease the burden of air service pricing and service in small communities.

Again, we appreciate this opportunity to provide our comments on this very important issue.

Sincerely,

JOHNNY FENDER, *Mayor of San Angelo.*
KEVIN BERRY, *Chairman, San Angelo Chamber of Commerce.*

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